112-131

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1884.

No. 135.

SAMUEL A. PEUGH, APPELLANT,

vs.

RICHARD H. PORTER ET AL.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

FILED OCTOBER 19, 1881.

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1 In the Supreme Court of the District of Columbia.

THOMAS P. McMANUS, Complainant,
vs.
MILDRED STANDISH *et al.*, Defendants.
} No. 6382. Equity Docket. Filed August 29, 1878.

To the hon. the judge of the supreme court of the District of Columbia:

Thomas P. McManus, a citizen of the State of Texas, but now and for more than five years last past commorant in the District of Columbia, humbly complaining, brings this his bill of complaint against Mildred Standish, Mary Ann Conrow, S. Kearney Parsons, Richard H. Musser, Richard H. Porter, Samuel E. Jenner, respectively, citizens of and residents in several of the States of the United States; Charles H. Winder, Albert Pike, and Robert W. Johnson, copartners under the name of Pike and Johnson; Samuel A. Peugh, Charles E. Rittenhouse, S. V. White, Thomas W. Bartley, Jack Brown, and William M. Evarts, commorants of the District of Columbia, who are all sued herein, in respect to their respective claims upon, and control over, certain moneys paid by the Republic of Mexico, and now held subject to the order of said defendant, William M. Evarts, and respectfully shows:

I. That heretofore, to wit, on or about the 28th of December, 1869, said defendants, Mildred Standish, Mary Ann Conrow, and S. Kearney Parsons, having claims against the Republic of Mexico, made and entered into several contracts with the defendant Musser, and thereby severally agreed to employ said Musser to prosecute their said claims, and agreed to allow to said Musser one-half of whatever sum might be recovered on account of said claims, for his services in prosecuting the same, and to enable him to obtain advances of money for the payment of the necessary expenses of prosecuting the said claims; that said Standish, Conrow, and Parsons severally made and executed letters of attorney to said Musser for the purposes aforesaid, which are filed in the Department of State of the United States; that the powers of attorney gave powers of substitution, are accompanied with an interest, and are irrevocable.

II. That thereafter, to wit, on or about the 4th of July, 1870, said Musser substituted the defendant, said Porter, as attorney in his place, assigning to him his own one-half interest in said claims for the express purpose of obtaining advances of money necessary for the due prosecution of said claims, and of employing skilful counsel by an instrument in writing, which was duly filed with the papers relating to said claims in the Department of State, and that in pursuance of his powers said Porter immediately employed the defendant, Charles H. Winder, as counsellor, and agreed to pay said Winder

2 a portion of the one-half the said claims for his professional services, and applied to and obtained from the defendants, Samuel A. Peugh and Charles E. Rittenhouse, a loan of money to pay for clerical labor, interpreting, &c., the incidental expenses of prosecuting said claims, and in consideration of the said advances

assigned to them, said Samuel A. Peugh and Charles E. Rittenhouse one-eighth (12½ per cent.) of said fees contracted to be paid.

III. That afterwards, to wit, on or about the 21st of April, 1874, said defendant Porter entered into an agreement in writing with the complainant to pay him for his services and expenses in searching and obtaining the evidence necessary to establish said claims, and thereby formally assigned to the complainant a share of said claims and an interest in the fund to be realized therefrom, which said agreement and assignment is filed with the papers relating to said claims in the office of the Secretary of State of the United States, a copy of which is herewith filed marked Complainant's Exhibit, and is prayed may be taken as part hereof; that the said work and expenses, the consideration of said contract, was done and supplied long prior to the date of said written contract in pursuance of the terms of a verbal contract; that at the time of the date of said contract the services had been rendered and the evidence found by the complainant deemed satisfactory; that the services of the complainant consisted in travelling at his own expense to great distances, the procuring the attendance of witnesses, the searching for and finding material facts in relation to said claims, having the proofs thereof ready, and supplying translations of such depositions by competent interpreters, all done at great personal risk and pecuniary cost to *to* the complainant.

IV. That said Musser, at the time of his substituting said Porter in his place as aforesaid, had a verbal understanding and agreement with him whereby the said Musser was to share the balance of the fees in said claims after the payment of the necessary expenses of the prosecution thereof.

V. That said Musser was fully advised of the nature and substance of the contracts heretofore mentioned, and knew the terms thereof and considerations therefor and duly assented to and ratified the same; that said Musser had full authority under his agreements with the said claimants to substitute said Porter and to ratify such contracts as those hereinbefore mentioned as made.

VI. That this complainant has heretofore made two assignments of his interests in the said fees, one to the defendants, Thomas W. Bartley and Samuel E. Jenner, under their firm name of Bartley and Jenner, which the said firm has assigned to said Thomas W. Bartley, executed the 5th day of April, A. D. 1877, to secure the payment of an indebtedness amounting to the sum of $453.50 for money borrowed, which is duly filed in the Department of State, the other resting in parole, made on July 9, 1878, to secure to the defendant, Jack Brown, the sum of $971.50 of money borrowed for the use of this complainant; that the said assignments, both of them, were made in good faith, and in all respects are valid contracts, and complainant is desirous that the same may be fully carried out.

3 VII. That thereafter said several claims by the efforts of the counsel aforesaid as a result of the contracts made as aforesaid by means of the services performed and obtained under and by

virtue of said contracts were successfully prosecuted and allowances were had in Mexican gold in the case of—

Standish of	$42,486 30
Of Conrow of	$50,497 26
And of Parsons of	$50,828 76
Aggregating the sum of	$143,812 32

And that the said aggregate sum of Mexican gold, $143,812.32, is agreed to be paid by the Government of Mexico under treaty provisions between that nation and the United States in several annual instalments through the Department of State of the United States of America; that part of the same, to wit, the sum of —— has been already paid to the defendant, William M. Evarts, for the payment of said claims and the balance will be payable in several annual instalments of —— per cent. of said claims.

VIII. That thereafter, to wit, on or about the 29th March, 1872, the defendants Standish, Parsons, and Conrow made powers of attorney to the defendants Pike and Johnson for the prosecution of the said claims, agreeing to pay them out of the recovery 25 per cent. of what might be recovered; that some time afterwards, and after the said claim had been successfully prosecuted at great cost and with great diligence, as aforesaid, to wit, on 16th February, 1877, said defendant Standish undertook by a paper writing filed in the Department of State to revoke her said power of attorney to the defendant Musser.

IX. That thereafter, to wit, on or about the 21st of February, 1877, said defendant Porter undertook to make an assignment and transfer of the whole one-half of said claims to which he had been originally entitled, under his substitution as aforesaid, as attorney of the claimants unto the defendant, S. V. White, for an advance of money to himself for his personal uses.

X. That said defendant Evarts, as agent of the Republic of Mexico, holds the said fund of —— dollars for the payment of about fourteen per cent. of said claims.

XI. That the other defendants than said Evarts are clamorous to obtain possession of said fund, whereas the same ought to be distributed among them in the order of their respective priorities; that all of the said defendants, to wit, the said claimants Musser and Porter, against whom the rights of complainant to his payment can be asserted, are now residents of the District, where the ordinary process of the law side of the court for the collection of money will not reach them, and as this complainant is advised and believes, are insolvent; and that without the interposition of your honorable court for the proper and lawful distribution of said fund, your complainant will be remediless in the premises and will suffer great and irreparable damage and loss.

4 Wherefore your complainant humbly prays:

1. That his lien upon the said fund may be established by decree of your honorable court.

2. That said defendants, and every of their, the agents, servants,

and attorneys, may be prevented and restrained, by order and injunction of your honorable court, from claiming the said fund, or any part thereof, or trying to obtain possession thereof.

3. That the defendant, William M. Evarts, may be required to pay the said fund at once into the registry of this court, and may be restrained by injunction of this court from paying out said fund until the further order of the court.

4. That the said assignment to said White may be decreed to be subject to the equities of the prior assignees of said Porter herein mentioned.

5. That the said contract of said Pike and Johnson may be decreed to refer only to the one-half of the said claims which the assignors then held undisposed of.

6. That due process may issue against every of said defendants, requiring them to appear and answer the exigency of this bill.

7. And for such other and further relief in the premises as he is entitled to, and as the nature of his case may require. And the complainant will ever pray.

The defendants to this bill are—

Mildred Standish,
Mary Ann Conrow,
S. Kearney Parsons,
Richard H. Musser,
Richard H. Porter,
Charles H. Winder,
Albert Pike,
Robert W. Johnson,
Samuel A. Puegh,
Charles E. Rittenhouse,
S. V. White,
Samuel E. Jenner,
Thomas W. Bartley,
Jack Brown, and
William M. Evarts.

THOMAS P. MacMANUS.

THOMAS W. BARTLEY,
THOS. JESUP MILLER, *Sol'rs.*

Thomas P. MacManus, being duly sworn, deposes and says he has read the above bill by him subscribed, and knows the contents thereof; that the matters and things therein stated as of his personal knowledge are true, and those therein stated on information and belief he believes to be true.

THOS. P. MacMANUS.

Subscribed and sworn to before me, this 29th day of August, 1878.

R. J. MEIGS, *Clerk*,
By M. A. CLANCY, *Ass't Clerk.*

5 EXHIBIT TO ORIGINAL BILL.

Filed Aug. 29, 1878.

This agreement, made this 21st day of April, in the year 1874, between Richard H. Porter and Charles H. Winder of the first part and Thomas P. MacManus, of San Antonio, Texas, of the second part: Whereas the said R. H. Porter is attorney in fact of Sarah Mildred Standish, Mary Conrow, and S. Kearny Parsons, the widows and son and heir at law, respectively, of Austin M. Standish, Aaron H. Conrow, and Munroe M. Parsons, who were murdered by the military authority of Mexico, near the river San Juan, in the State of Nueva Leon, in Mexico; and whereas a proceeding is now pending before the American and Mexican Joint Commission for indemnity to said widows and son on account of the murders aforesaid; and whereas the said Thomas P. MacManus has procured from Mexico testimony establishing the facts set forth in the memorials of the said widows and son: Now, therefore, for and in consideration of the premises, the parties hereto of the first part hereby agree and bind themselves that in the event of awards of indemnity being decreed by said joint commission, to pay over to the said Thomas P. MacManus one-fifth of the whole fee agreed to be paid by the said petitioners for recovery of their respective claims.

R. H. PORTER,
Attorney-in-fact.
CH. H. WINDER,
Of Counsel.

Witnesses:
W. S. LEMON.
JNO. A. RAWLINGS.

In the Supreme Court of the District of Columbia, the 29th day of Aug., 1878.

THOMAS P. MCMANUS, Complainant,
vs.
WILLIAM M. EVARTS *et al.*, Defendants. } No. 6382. Eq. Doc. 18.

The President of the United States to William M. Evarts, Albert Pike, Robert W. Johnson, Charles H. Winder, Richard H. Porter, Richard H. Musser, Mildred Standish, S. Kearney Parsons, Mary Ann Conrow, Samuel E. Peugh, Charles E. Rittenhouse, S. V. White, Samuel E Jenner, Thomas W. Bartley, and Jack Brown, defendants:

You are hereby commanded to appear in this court at its first special term, occurring twenty days after service of this subpœna, and answer the exigency of the bill this day filed and entitled as above, under pain of attachment and such other process of contempt as the court shall award.

D. K. CARTTER,
Chief Justice.
R. J. MEIGS, *Clerk,*
By R. J. MEIGS, JR.,
Ass't Clerk.

Memorandum.

That the defendants herewith served are to enter their appearance in this suit in the clerk's office on or before the day at which this writ is returnable; otherwise the bill may be taken for confessed.

6 (Endorsed.)

Restraining Order.

The defendants are hereby restrained as prayed in the within-mentioned bill until further order to be made, if at all, after a hearing, which is fixed for the 4th day of September, 1878, of which take notice.

By the court: HUMPHRIES, *Justice.*

Summoned and served notice of injunction on Wm. M. Evarts. Not to be found: Charles H. Winder, Richard H. Musser, Richard H. Porter, S. Kearney Parsons, Mildred Standish, Mary Ann Conrow, Robert W. Johnson, S. V. White, and Samuel E. Jenner. Oct. 1, 1878.

F. DOUGLASS, *Marshal.*

In the Supreme Court of the District of Columbia, the 5th day of November, 1878.

THOMAS P. MACMANUS *vs.* WILLIAM M. EVARTS *et al.* } No. 6382. Eq. Doc. 18.

On motion of the plaintiff, by Mr. Miller, his solicitor (attorney), it is ordered that the defendants, Charles H. Winder, Richard H. Porter, Mildred Standish, S. Kearney Parsons, Mary A. Conrow, S. V. White, Samuel E. Jenner, and Richard H. Musser, cause their appearance to be entered herein on or before the first rule day, occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the court: MACARTHUR, *Justice, &c.*

Proof of Publication. Filed Jan. 2, 1878.

WASHINGTON, D. C., *Dec.* 31, 1878.

Mr. Thomas Jesup Miller, sol'r, to Washington Law Reporter, Dr.

1878.
Dec. 31. To pub. abs. def. notice, MacManus against Evarts *et al.* $4 00

Rec'd payment,
JOHN L. GINCK AND CO.

On this 31st day of December, A. D. 1878, personally appeared before me, the undersigned, a notary public in and for the District aforesaid, James T. Powell, being personally well known to me, and

made oath in due form of law to the following statement, viz: That affiant is one of the publishers of the "Washington Law Reporter," a newspaper published in the city of Washington, D. C.; that the annexed noticewas published in said "Washington Law Reporter" once a week for three successive weeks, commencing on the 16th day of December, 1878.

JAMES T. POWELL.

Sworn and subscribed before me, the day and year above written.

[SEAL.] L. P. WILLIAMS,
Notary Public.

7 *Subpœna.*

Issued March 21st, 1879. Returned April 15, 1879.

In the Supreme Court of the District of Columbia, March 21st, 1879.

THOMAS P. MACMANUS, Complainant, *against* MILDRED STANDISH, S. V. WHITE, Defendants. } No. 6382. Eq. Doc. 18.

The President of the United States to S. V. White:

You are hereby commanded to appear in this court at its first special term occurring twenty days after service of this subpœna, and answer the exigency of the original bill filed August 29, 1879, and the amendment and supplement to bill this day filed and entitled as above, under pain of attachment and such other process of contempt as the court shall award.

Witness D. K. Cartter, chief justice.

[SEAL.] R. J. MEIGS,
Clerk, &c.,
By C. ROBINSON, JR.,
Ass't Clerk.

Marshal's Return.

(Endorsed.)

I hereby certify that on the 12th day of April, 1879, at the city of New York, in my district, I personally served the within subpœna upon the within-named S. V. White, by exhibiting to him the within original, and at the same time leaving with him a copy thereof.

Dated April 14th, 1879.

LOUIS F. PAYN,
U. S. Marshal, S. D. N. Y.

In the Supreme Court of the District of Columbia.

THOMAS P. MACMANUS *vs.* MILDRED STANDISH *et al.* } No. 6382. Eq. Doc. 18.

Please take notice that on Saturday next, the 21st inst., at 11 o'clock a. m., or as soon thereafter as counsel may be heard, we will

move the court to order the payment into the registry of the court of the balance of the fund mentioned in these proceedings.

T. W. BARTLEY.
THOS. JESUP MILLER, *P. Q.*

Dec. 17, 1878.

8 In the Supreme Court of the District of Columbia, the 21st day of December, A. D. 1878.

THOMAS P. McMANUS *vs.* MILDRED STANDISH *et al.* } 6382. Equity.

The defendants, except the defendant, William M. Evarts, are hereby restrained, as prayed in the original bill of complaint, until further order, to be made, if at all, after a hearing, which is fixed, if at all, for the 28th day of December, 1878, of which take notice.

By the court: MACARTHUR, *Justice.*

Service accepted for Albert Pike and Richard H. Musser.

L. H. PIKE, *Sol'r.*

Demurrer of Defendants Musser, Pike, Johnson. Filed Dec. 28, 1878.

Between THOMAS P. MACMANUS, Plaintiff,
and
MILDRED STANDISH, MARY ANN CONROW, S. Kearney Parsons, Richard H. Musser, Charles H. Winder, Richard H. Porter, Albert Pike, Robert W. Johnson, Samuel A. Pugh, Charles E. Rittenhouse, S. V. White, Samuel E. Jenner, Thomas W. Bartley, William M. Evarts, and Jack Brown, Defendants. } No. 6382. Equity Doc. 18.

The demurrer of Richard H. Musser, Albert Pike, and Robert W. Johnson, above-named defendants, to the bill of complaint of the above-named plaintiff.

These defendants, by protestation, not confessing all or any of the matters and things in the said plaintiff's bill contained to be true, in such manner and form as the same are therein set forth and alleged, doth demur to the said bill, and for cause of demurrer say:

That the said plaintiff has not in and by his said bill made a case that comes within the jurisdiction of this honorable court. That the plaintiff's said bill, in case the same were true, which these defendants do in no wise admit, contains not any matter of equity whereon this court can ground any decree or give the plaintiff any relief or assistance as against them, these defendants.

Wherefore and for divers other good causes of demurrer appearing in the said bill, these defendants do demur thereto, and they pray the judgment of this honorable court whether they shall be com-

pelled to make any further and other answer to the said bill, and they humbly pray to be hence dismissed, with their reasonable costs in this behalf most wrongfully sustained.

LUTHER H. PIKE,
Solicitor for Defendants.

I hereby certify that the foregoing demurrer is, in my opinion, well founded in point of law.

LUTHER H. PIKE,
Solicitor for Defendants.

DISTRICT OF COLUMBIA, }
County of Washington, } *ss:*

I, Richard H. Musser, one of the above-named defendants, do solemnly swear that the foregoing demurrer is not interposed for the purpose of delay.

R. H. MUSSER.

Subscribed and sworn before me, Dec. 28, 1878.

R. J. MEIGS, *Clerk,*
By R. J. MEIGS, JR., *Ass't Clerk.*

9 In the Supreme Court of the District of Columbia, the 30th day of December, A. D. 1878. In Equity.

Between THOMAS P. MCMANUS, Plaintiff,
and
MILDRED STANDISH *et al.*, Defendants.

The restraining order granted in the above cause on the 21st day of December, A. D. 1878, coming on this 30th day of December, 1878, for hearing, the court, upon argument of counsel, doth order that said restraining order be, and the same is hereby, vacated and held for nought, and the court doth refuse to grant the temporary injunction asked for on said hearing by said plaintiff.

By the court: MACARTHUR, *Justice.*

In the Supreme Court of the District of Columbia.

THOMAS P. MCMANUS
vs.
RICHARD H. PORTER *et al.* } No. 6382. Equity Doc. 18.

Now comes the complainant, and with the leave of the court first had and obtained, and files this supplement and amendment to his original bill in this cause, and in addition to the averments in said bill contained, further says:

1. That since the filing of said original bill the defendants, Richard H. Musser and Pike and Johnson, have made arrangements, together with the defendant, White so as to release all their interests in and claims upon the funds mentioned in this cause to said defendant White, and that said defendants, Musser and Pike and Johnson, have, in pursuance of a contract of sale with said White and a formal transfer to him, ceased to have any interest in the funds

mentioned in these proceedings and in the subject-matter of this cause.

2. That since his said purchase of the interest of said Pike and Johnson and Musser the said defendant White has combined and confederated with the defendant Richard H. Porter to defraud and cheat the complainant and the other assignees of said Porter's interest in said funds, and to obtain and keep for their individual uses the whole of the interest originally belonging to said Richard H Porter or controlled by him as agent for said Musser, as described in the original bill of complaint in this cause.

That the said Porter, with the consent of the said claimants, had full authority from the defendant Musser to associate the defendant Winder as counsel for the claimants before the Mexican and American commission; that Musser knew of the association of said Winder, and by frequent acts before the appearance of the defendants, Pike and Johnson, in said claims cases, ratified, confirmed, and allowed the employment of said Winder, and adopted his work before the said commission; that the original verbal agreement made between the complainant and said Winder and Porter was known to said Musser, as complainant is informed and believes, and the performance of the services undertaken to be performed by the complainant was necessary to the obtaining any award whatever before
10 the said commission; that said original verbal contract required that the said defendants should assign to the complainant one-fifth of the fees (to wit, one-half of whatever sum might be awarded to said claimants); that the said work, when done, was turned over to and accepted by the said Winder and Porter, and was admitted by them to be the necessary step to establish the said claims, and thereafter the contract in writing, particularly described in the original bill, was delivered to the complainant; that the defendant Musser well knew of the said contract with the complainant, and thereafter in frequent acts recognized its binding force and the validity of other contracts made by said Porter, as controlling the fees in said claims, and accepted the services of the complainant and of the other parties with whom said Porter at that time had contracted in furtherance of the prosecution of said claims.

That the said defendant Porter now has in his possession and under his control various letters, notes, and memoranda, written and signed by said defendant Musser, fully showing and conclusively proving that he, said Porter, was acting within the scope of his authority when he made the contract with the complainant, and further showing that said defendant Musser, after the making of said contract by said Porter, recognized the validity and force of the same to bind as well the interest which he, said Musser, had in said claims as that of said Porter; that these written memoranda consist of letters written by said defendant Musser at various and sundry times, before any award was made by said commission to the defendants, Charles H. Winder, Charles E. Rittenhouse, Samuel A. Peugh, and to himself, said Richard H. Porter; that now, in furtherance of his scheme, he, in conjunction with said defendant White, refuses to exhibit the said letters and memoranda, and keeps

them concealed; that the said complainant is advised and believes that he is entitled to and ought to have a full discovery of said correspondence, and that said discovery is necessary for the protection of the rights of the complainant in the premises.

That said defendant Porter, now acting in conjunction with said White, and under the protection of the several assignments to said White, which have been mentioned in the original bill in this supplement, in fraud of the rights of your complainant and of his several assignments made prior to any purchase by or assignment to said White, of all which said White had actual and also constructive notice, is endeavoring to obtain the said fund (to wit, one-half of the award to said claimants), and without the interposition of your honorable court the complainant is advised and believes that said defendants will succeed in obtaining such fund.

Wherefore the complainant humbly prays, in addition to the prayers of his original bill:

11 That said defendant Porter may be required to make made the contract with the complainant, and further showing that said defendant Musser, after the making of said contract by said Porter, recognized the validity and force of the same to bind as well the interest which he, said Musser, had in said claims as that of said Porter; that these written memoranda consist of letters written by said defendant Musser at various and sundry times before any award was made by said commission to the defendants, Charles H. Winder, Charles E. Rittenhouse, Samuel A. Peugh, and to himself, said Richard H. Porter; that now, in furtherance of his scheme, —, in conjunction with said defendant White, refuses to exhibit the said letters and memoranda, and keeps them concealed; that the said complainant is advised and believes that he is entitled to and ought to have a full discovery of said correspondence, and that said discovery is necessary for the protection of the rights of the complainant in the premises.

That said defendant Porter, now acting in conjunction with said White, and under the protection of the several assignments to said White, which have been mentioned in the original bill and in this supplement, in fraud of the rights of your complainant and of his several assignments made prior to any purchase by or assignment to said White, of all which said White had actual and also constructive notice, is endeavoring to obtain the said fund (to wit, one-half of the award to said claimants), and without the interposition of your honorable court the complainant is advised and believes that said defendants will succeed in obtaining such fund.

Wherefore the complainant humbly prays, in addition to the prayers of his original bill:

That said defendant Porter may be required to make full, true, and particular discovery of the matters and things herein and in said original bill set forth, and particularly of the various letters of said defendant Musser to himself, and to the defendants, Charles H. Winder, Samuel A. Peugh, and Charles E. Rittenhouse, relating to the prosecution of said claims before said commission.

That said defendants, Porter and White, may be restrained and

enjoined, by order and injunction of your honorable court, from applying for or receiving, or in any manner obtaining, the said fund mentioned in these proceedings.

That a receiver may be appointed to apply for and obtain the said fund, and to release and discharge the custodian thereof from any claim for or on behalf of any party to this suit.

That the said fund may be paid into the registry of this court.

And for such other and further relief in the premises as the complainant may be entitled to, and as the equity and good conscience may require in the premises.

And the complainant will ever pray.

THOMAS P. MACMANUS.

T. W. BARTLEY.
JESUP MILLER.

12 Thomas B. MacManus, being sworn in due form of law deposes and says: He has read the foregoing supplement and amendment to his original bill of complaint, and knows the contents thereof; that the matters and things therein stated as of his personal knowledge are true, and those therein stated on information and belief he believes to be true.

THOS. P. MACMANUS.

Sworn to and subscribed before me, this 21st day of March, 1879.
R. J. MEIGS, *Clerk*,
By C. ROBINSON, JR., *Ass't Clerk*.

In the Supreme Court of the District of Columbia the 21st day of March, A. D. 1879.

MACMANUS *vs.* PORTER *et al.* } Equity. No. 6382.

It is ordered that the complainant have leave to file the foregoing supplement and amendment to his original bill, unless cause to the contrary be shown by the defendants, on or before the 29th day of March next. And it is further ordered, that the defendants be hereby restrained as prayed in the foregoing supplement and amendment to his bill, until further order, to be made, if at all, after a hearing which is fixed for the 29th day of March, 1879, of which take notice.

MACARTHUR, *Justice*.

Order Postponing Hearing of Injunction. Filed April 8, 1879.

In the Supreme Court of the District of Columbia the 21st day of March, 1879.

THOMAS P. MACMANUS *vs.* MILDRED STANDISH, STEPHEN V. WHITE, *et al.* } Equity. No. 6382.

It is ordered that the complainant have leave to file the supple

ment and amendment to his bill as prayed, unless cause to the contrary be shown by the defendants on or before the 12th day of April next. And it is further ordered, that the defendants be hereby restrained as prayed in the supplement and amendment to his bill until the further order of this court, to be made, if at all, after a hearing, which was fixed for the 29th day of March, A. D. 1879, but which has been postponed until the 12th day of April, or as soon thereafter as the motion may be reached; of which take notice.

By the court:

MACARTHUR, *Justice.*

13 In the Supreme Court of the District of Columbia, the 21st day of March, 1878.

THOMAS P. MACMANUS
vs.
MILDRED STANDISH, STEPHEN V. WHITE, *et al.* } Equity. No. 6382.

It is ordered that the complainant have leave to file the supplement and amendment to his bill as prayed, unless cause to the contrary be shown by the defendants, on or before the 12th day of April next; and it is further ordered that the defendants be hereby restrained, as prayed in the supplement and amendment to his bill, until the further order of this court, to be made, if at all, after a hearing which was fixed for the 29th of March, A. D. 1879, but which has been postponed until the 12th day of April, or as soon thereafter as the motion may be reached; of which take notice.

By the court: MACARTHUR, *Justice.*

A true copy. Test:

R. J. MEIGS, *Clerk,*
By C. ROBINSON, JR., *Ass't Clerk.*

I hereby certify that on the 12th day of April, 1879, at the city of New York, at my district, I personally served the within subpœna [order] upon the within-named Stephen V. White by exhibiting to him the within original, and at the same time leaving with him a copy thereof.

LOUIS F. PAYN,
U. S. Marshal, S. D. N. Y.

Dated April 14, 1879.

In the Supreme Court of the District of Columbia, the 12th day of April, A. D. 1879.

THOMAS P. MCMANUS
vs.
RICHARD H. PORTER, STEPHEN V. WHITE, *et al.* } No. 6382.

This cause coming on to be heard upon the order *nisi* to give leave to the complainant to file the supplement and amendment to his bill and for an injunction, it is thereupon, this 12th day of April, A. D. 1879, ordered and decreed that the complainant have leave to

file the said amendment and supplement to his bill; and it is further ordered that the hearing on motion for an injunction be postponed until Saturday next, the 19th day of April, and that the restraining order heretofore allowed be continued until the further order of the court.

By the court: MACARTHUR, *Justice.*

In the Supreme Court of the District of Columbia, the 17th day of May, A. D. 1879.

THOMAS P. MACMANUS *vs.* MILDRED STANDISH *et al.* } 6382. Equity.

This cause coming on to be heard at this term of the court, upon the motion of the complainant for a decree *pro confesso* against
14 the defendants, Charles H. Winder, S. V. White, and Samuel E. Jenner, and it appearing to the court that heretofore, to wit, on Nov. 5th, 1878, an order of publication was granted against said defendants and others, and was duly published, and that said defendants have had other notice of the pendency of the cause and of the proceedings herein, and hath not appeared herein, thereupon it is, this 17th day of May, 1879, ordered, adjudged, and decreed that the matters and things stated and alleged in said bill of complaint be taken as confessed against the said Charles H. Winder, S. V. White, and Samuel E. Jenner.

By the court: MACARTHUR, *Justice.*

THOMAS P. MACMANUS *vs.* WM. M. EVARTS *et al.* } Equity. No. 6382

The separate answer of Richard H. Porter, one of the defendants to the bill of complaint of Thomas P. MacManus, in chancery exhibited This respondent, saving all exception to the manifold errors and uncertainties in said bill contained, for answer unto so much thereof as he is advised it is material or necessary for him to answer, answering, says:

1. He admits the first paragraph of said bill of complaint.

2. Answering the second part of complainant's bill, respondent says: He employed the defendant Musser expressly for the purpose of obtaining the powers of attorney from Standish, Parsons, and Conrow, of Missouri. Said claim were respondent's, for the purpose of prosecuting. It was a part of the agreement and well understood by Musser at the time that respondent was to be substituted; and so, acting in accordance with that agreement and understanding by and between said Musser and respondent, he, the said Musser, did, on the 4th of July, 1870, by a proper instrument, substitute respondent as attorney. Respondent did contract with Messrs Rittenhouse and Peugh on or about the 16th of February, 1870, to borrow, and did borrow, the sum of $300.00 for the purpose of paying the expenses necessary in proving up said claims. That some time in

April respondent returned to St. Louis, where he saw Musser, and told said Musser that he, respondent, had employed said Rittenhouse and Peugh, and put said Musser in correspondence with said Rittenhouse and Peugh. Respondent merely told said Musser that said Rittenhouse and Peugh were respondent's attorneys. That respondent was to give said Rittenhouse and Peugh part of respondent's fees. Respondent positively and emphatically declares that he, respondent, did not enter into all the particulars of said transaction, because he, respondent, did not wish to confide his private business to his agent. Had said Musser held the confidential relations with said respondent as as is claimed, respondent would then have communicated to said Musser fully upon the subject. That some time in 1871 said Rittenhouse showed respondent a letter from said Musser, in which said Musser claimed to have an equal interest with
15 respondent, because said Musser's name was in a certain power of attorney. Said Musser must be fully aware of the fact that his name was placed in said power of attorney because he, said Musser, resided there; hence said respondent gave the power of atttorney to said Musser, with the power of substituting respondent when called upon so to do. Having confidence in said Musser, and believing he was not a man that would attempt to take anvantage of respondent in any way, respondent selected him, and reposed in him this confidence; which confidence, on the part of said Musser, — subsequently violated. Respondent at once wrote to said Musser relative to his, said Musser's, bad faith towards respondent, informing said Musser that he, respondent, would never again have anything to do with him, Respondent again went to St. Louis in June, 1871, and remained there over two weeks, with a view of settling with said Musser, but failed to do so; and then and there notified said Musser that from that date respondent would have nothing to do with him. Respondent also notified the claimants that he, respondent, was their attorney, and would not, under any circumstances, be connected with Musser in any way whatever; otherwise, they could take their claims and place them in the hands of any attorney they deemed proper. Said claimants insisted and prevailed upon respondent to continue with the prosecution of said claims, stating that if the power of attorney, with substitution, already held by respondent, was not satisfactory, they, the said claimants, would execute one to respondent. That in March, 1874, young Parsons had arrived at twenty-one years of age. He came on to Washington, bringing with him a power of attorney and a contract from his aunt, Mrs. Standish, to be delivered to respondent if, in his judgment, he found the statements heretofore made by respondent were true. Said Parsons, as respondent is informed, had visited the office of Messrs. Pike and Johnson before respondent learned that said Parsons was in this city, and also the commission. After satisfying himself he called upon respondent, and delivered to respondent the power of attorney and contract aforesaid, and also gave his power of attorney to respondent. Upon examination of the papers respondent discovered that Mrs. Standish had not acknowledged her power of attorney before the proper officer. Respondent returned

the same to her in Jefferson City, Mo., and in April, 1874, she returned her power of attorney to respondent properly acknowledged.

3. In answer to the third paragraph of said bill, respondent says: He had been at great expense in the prosecution of said claims. He was compelled to borrow money thereupon in the winter of 1876, and 1877 respondent borrowed money of Mr. S. V. White, of New York, and pledged respondent's interest in said claims of Standish and Parsons as collateral security for the payment of respondent's note. That when said note matured respondent was unable to meet it, when a proposition was made to purchase respondent's interest in two of the claims which respondent accepted
16 as the best thing he could do under the circumstances. It was with great reluctance respondent did accept said proposition, but would not have done so if respondent had supposed that said White intended to complicate said matters by any negotiations with Messrs. Pike and Johnson. Respondent left St. Louis in July, 1871, and from that time has had no correspondence with Musser. Respondent never said anything to Musser concerning the MacManus contract, and if said Musser ever knew anything about it he must have obtained his information from some other source. When respondent came to this city, in 1871, he found that Rittenhouse and Peugh had employed Charles H. Winder, Esq., to make an argument before the commission, when respondent called on said Winder and found that said Winder was not disposed to give his attention to the matter unless respondent would pay him for what services he had rendered, as well as for services to be rendered; consequently respondent had to employ said Winder. Respondent then returned to Messrs. Rittenhouse and Peugh the money borrowed and took up the contract aforesaid, and from that time on relied upon Mr. Winder as counsel. In the contract with McManus it was believed that it would take large sums of money to enable said McManus to go into Mexico, and take the hazard of life, to look up witnesses; and being informed of the importance of the testimony that said McManus informed respondent he could get, respondent agreed to the contract. That when said proofs were translated respondent found that the same was entirely useless and of no importance, and was not used either before the commission or the umpire; and such proofs, if proofs at all, would not have cost more than twenty-five dollars. The place where said proofs purported to have been taken was in Piedras Negras, on the Rio Grande, across the river from Eagle Pass. Respondent avers and charges that said McManus was never in Mexico on this business, and at no time was he out of this city long enough to have gone anywhere near the place from which the said purported testimony came. That said McManus has no legal or equitable claim to said fund arising from the judgments of said commission.

4. The 4th and 5th paragraphs of said bill are substantially answered in the above paragraphs of this answer.

5. The 6th paragraph this respondent knows nothing.

6. The 7th paragraph of said bill is substantially correct.

7. To the 8th paragraph, respondent knows nothing of his own knowledge.

8. The 9th paragraph of said bill has already been fully answered.

9. The 10th parapraph is admitted.

10. Answering 11th paragraph, respondent says he owes McManus nothing, and if said McManus has any claim whatever against respondent he has full and complete remedy at law.

11. Respondent answering the supplemental amendment says, the above facts set forth in this answer will apply to the supplemental amendment to said bill.

17 12. Respondent further answering avers and charges that he is the only proper person to receive said funds, and that said bill is filed by McManus for the express purpose of compelling respondent to come to some settlement with complainant rather than prolong said litigation; that as soon as it was known that respondent would realize fees on these claims irresponsible persons began to harass respondent with one and another pretended claim for some imaginary service by them rendered.

Having answered, he prays that the bill may be dismissed, &c.

R. H. PORTER.

JOHN J. JOHNSON,
R. H. PORTER,
Sol'r- for Defendant.

Subscribed and sworn to before me April 11th, 1879.

R. J. MEIGS, *Clk S. C. D. C.*,
By R. J. MEIGS, JR., *Ass't Clk.*

In the Supreme Court of the District of Columbia.

THOMAS P. MACMANUS, Complainant,
vs.
MILDRED STANDISH *et al.* } In Equity. No. 6382.

The separate answer of Samuel A. Peugh, one of the defendants to the bill of complaint of Thomas P. MacManus, in chancery exhibited. The respondent, waiving and reserving all exceptions to any and all errors and uncertainties contained in said bill of complaint, for answer unto so much thereof as he is advised it is essential and necessary for him to answer, says:

To the second (2d) paragraph in said bill of complaint, that the said Rittenhouse and Peugh, by their terms of agreement with said Porter, were to receive as compensation for their advancements and services in the prosecution of said claims before said commission one-half of the amount which he, the said Porter, was entitled to receive from said claimants, which amount coming to said Porter was to be the one-half of the entire awards.

The other paragraphs of said bill of complaint than the one above mentioned, and also the amendment and supplement to said bill of complaint, this respondent does not controvert, but admits the same to be true.

And the said Samuel A. Peugh, by way of a cross-bill touching the matters in question in said bill of complaint and affirming the facts in his above-mentioned answer, further represents that:

1st. He is a citizen of the District of Columbia, and the defendants against whom he makes complaint are all non-residents, to wit: S. V. White, Richard H. Porter, Mildred Standish, Mary A. Conrow, and Elijah Stout, admin'r; S. Kearney Parsons, Richard H. Musser.

18 2d. That on the 16th day of February, 1870, the complainant, with said Charles E. Rittenhouse, entered into a contract, in writing, under seal, with the defendant, Richard H. Porter, who was the attorney for one Richard H. Musser, the attorney-in-fact for Mildred Standish, widow of Austin M. Standish, Mrs. Ann Conrow, widow of Aaron H. Conrow, and S. Kearney Parsons, partner of Monroe M. Parsons, and guardian of the son of Monroe M. Parsons, all of the State of Missouri, to advance money, and to prosecute certain claims for said parties then pending [before] the American and Mexican Joint High Commission, then in session in the city of Washington, District of Columbia, said claims respectively known as Nos. 385, 392, and 397.

3. That, by virtue of the said agreement, a copy of which is hereunto attached and marked Exhibit "A," and which the complainant prays may be taken as a part of this bill, it was stipulated and agreed that complainant, together with said Rittenhouse, should receive one-half of the amount of the fee agreed to be paid the said defendant, Richard H. Porter, to wit, one-half of fifty per cent. of the amounts of any and all awards that might be made to said claimants, or either of them.

4. And the complainant avers that he, together with said Rittenhouse, immediately entered upon a vigorous prosecution of said claims, expending his time and money, and exerting his best professional skill in the cases and management of said claims, and employed able counsel, Mr. Charles H. Winder, at a large contingent fee, to assist and succeed in procuring the allowance of $42,486.30 on claim 385, in favor of Mildred Standish, and the sum of $50,497.26, on claim No. 392, in favor of Mary A. Conrow and, Elijah Stout, administrator of A. Conrow, deceased, and the sum of $50,888.70, on claim No. 397, in favor of S. Kearney Parsons, by Jackson L. Smith, guardian, and amounting in the aggregate to about the sum of $143,000, and that the complainant was and is entitled to about the sum of $17,875 out of the said aggregate amount, for which he claims his lien.

5. That while complainant was diligently prosecuting said claims, according to contract and agreement, said Rittenhouse, without complainant's knowledge or consent, relinquished his interest only therein to said Porter, and unwittingly, as he says, let the contract fall into the hands of said Porter. Complainant, on learning this fact, demanded of said Rittenhouse and Porter the return of the same, but which said Porter frequently promised its return, but thus far has failed to do so, and that on the 16th day of April instant, this complainant learned for the first time that said agree-

ment has been filed in the State Department by said Porter, in fraud of complainant's rights.

6. For a more particular statement of the amont and character of the services performed by complainant in the prosecution of the above claims, reference is made to Exhibit "B," hereto attached, copies of which briefs and arguments referred to in said exhibit, were from time to time forwarded to the claimants by mail.

19 7. That all the labor and service performed in and about the prosecution of said claims by the complainant was performed by and with the knowledge and consent of the respective claimants, and at their and each of their requests, as well as with the full knowledge and request of said R. H. Musser and the said Richard H. Porter, one of the defendants.

8. That after the complainant had procured the allowance of the claims aforesaid, and before the money was paid over, or any part thereof, the said Richard H. Porter, in fraud of the rights of this complainant, undertook to make an assignment of fifty per cent. of the amount of said claims, being the whole of his original interest to one S. V. White, of the city of New York, and for this purpose, in fraud of the rights of this complainant, procured a power of attorney from the said claimants, and thereunder did make an assignment to said S. V. White, in fraud of the rights of complainant. And subsequent to the allowance of said award of said claimants, with a like intent to defraud defendants Standish, Conrow, and Parsons, did make an assignment of one-half of said awards, one-quarter to be paid to Richard H. Musser, and one-quarter to be paid to Pike and Johnson, attorneys, of this city.

9. That a large sum of money is now on deposit with the Hon. Wm. M. Evarts, Secretary of State, U. S., and large sums of money are to be hereafter paid into his hands on account of the awards aforesaid, and that said S. V. White and other defendants, his and their servants, agents, and attorneys attempting to, and are about to make collection of the same in fraud of the complainant's rights.

10. That the said sum now in the hands of the said Hon. Wm. M. Evarts, Secretary of State, is held by him for the purpose of paying the unpaid balances of the said allowances to the said Mildred Standish, Mrs. Ann Conrow, and S. Kearney Parsons, and the said White, under the pretended authority aforesaid, has demanded and is about to collect from the said Hon. Wm. M. Evarts, Secretary of State, the whole of said balances for the purpose, and with the intent of defrauding your complainant, and that all of the other said defendants (other than the said Hon. Wm. M. Evarts) are conspiring to defraud this complainant out of any and all compensation for his years of services aforesaid, and out of the reimbursement of any part of the money advanced and expended by him in the prosecution of said claims, and in order to do this the said defendants intend, and are about, to remove the whole of said money beyond the jurisdiction of this court as soon as they shall have collected and receive the same.

11. And your said complainant does further aver that he has received no part of the monies expended by him as aforesaid, nor any

compensation whatever for the services rendered by him in the prosecution of said claims, or either of them.

And inasmuch as your complainant has no remedy in the premises save in this honorable court, he therefore prays as follows:

20 1st. That the said S. V. White, and the said Richard H. Porter, and all of said defendants, and all persons acting for either, or in either of their behalf, may be enjoined and restrained by order of this court from collecting or receiving from the said Hon. Wm. M. Evarts, the Secretary of State of the United States, or from any other person, the balances now in his hands, or any part therof, that now remains unpaid on either one or all of the said allowances to the said Mildred Standish, Mrs. Ann Conrow, widow of Aaron H. Conrow, and S. Kearney Parsons, or any draft for the same.

2. For an order of publication against all of said non-resident defendants.

3. For such further and other relief as the nature of the case may require.

SAM'L A. PEUGH.

M. J. SOUTHARD, *Solicitor.*

I do so solemnly swear that I have heard read the petition by me subscribed, and know the contents thereof, and that the facts therein stated, upon my personal knowledge, are true, and that the facts therein stated upon information and belief I believe to be true.

SAMUEL A. PEUGH.

Subscribed and sworn to before me, this 18th day of April A. D. 1879.

R. J. MEIGS, *Clerk,*
By C. ROBINSON, JR., *Ass't Clerk.*

Let the cross-bill be filed as prayed, and a restraining order in the usual form, as prayed, returnable on the 26th day of April, A. D. 1879.

MACARTHUR, *Justice.*

Apr. 18th, 1879.

In the Supreme Court of the District of Columbia, April 18, 1879.

THOMAS P. MACMANUS, Complainant,
vs.
MILDRED STANDISH *et al.*, Defendants. } No. 6382. Eq. Doc. 18.

The President of the United States to S. V. White, defendant:

You are hereby commanded to appear in this court at its first special term occurring twenty days after service of this subpœna, and answer the exigency of the cross-bill this day filed and entitled as above, under pain of attachment, and such other process of contempt as the court shall award.

[SEAL.] R. J. MEIGS, *Clerk.*
By C. ROBINSON, JR., *Ass't Clerk.*

Witness:

D. K. CARTTER, *Chief Justice.*

MEMORANDUM.—That the defendant herewith served is to enter his appearance in this suit, in the clerk's office, on or before the day at which this writ is returnable, otherwise the bill may be taken for confessed.

21. Hearing on the prayer of said cross-bill for injunction is fixed for 26th of April, 1879. Until then you are restrained as prayed.

By order of the court: MACARTHUR, *Justice.*

Attest:

R. J. MEIGS, *Clerk, &c.,*
By C. ROBINSON, JR., *Ass't Clerk, &c.*

Service Accepted.

I admit that service of the within subpœna was made in New York city on me, this day, by giving me a copy hereof.

S. V. WHITE.

May 7, 1879.

In the Supreme Court of the District of Columbia, the 19th day of April, A. D. 1879.

THOMAS P. MACMANUS
vs.
MILDRED STANDISH, STEPHEN V. WHITE, *et al.* } No. 6382. Eq. Doc. 18.

This cause came on to be heard at this term of the court, upon the motion of the complainant, for an injunction to restrain the defendants, Stephen V. White and Richard H. Porter, from applying for, or receiving, or in any manner obtaining the funds mentioned in these proceedings, and it appearing that the defendant White has been duly notified of this application, and required to appear, and hath not answered the original bill or the supplement thereto, and that the defendant, Porter, is willing that the said injunction shall issue: Now, upon the hearing said motion, and after consideration thereof, it is, this 19th day of April, A. D. 1879, ordered and decreed that the defendants, Richard H. Porter and Stephen B. White, and each of them, and their, and each of their attorneys and agents be, and they hereby are, restrained and enjoined from in any manner applying for or receiving the funds mentioned in these proceedings, or any part thereof, during the pendency of this suit.

By the court: MACARTHUR, *Justice.*

In the Supreme Court of the District of Columbia.

SAMUEL A. PEUGH, Complainant,
vs.
MILDRED STANDISH *et al.*, Defendants. } No. 6382. Eq. Docket.

And now comes the said Samuel A. Peugh, a citizen of the United States, and a resident of the said District of Columbia, and, with leave of the court first obtained, files herein his amended cross-bill, and says:

1st. That he complains against Mildred Standish, Mary Ann Conrow, S. Kearney Parsons, Richard H. Porter, and S. V. White, respectively citizens of and residents in several of the States of the United States, and Charles H. Winder, Charles E. Rittenhouse, Thomas P. MacManus, Thomas W. Bartley, Jack Brown, and
22 Wm. M. Evarts, Secretary of State of the United States, commorants of the District of Columbia, touching their several interests in and control over certain funds recovered from the Government of Mexico, on claims preferred by the said Standish, Conrow and Parsons, and now held by said William M. Evarts for distribution.

2d. That the parties to the original bill and in the amendment and supplement thereto of the said Thomas P. MacManus, are the same as those mentioned in the preceding paragraph, with the exception of Richard H. Musser, Albert Pike, and Robert W. Johnston, partners in the name of Pike and Johnston, and Samuel E. Jenner, each and all of whom were parties defendant in said original bill of said MacManus, but are not necessary parties herein, for the reason that since the filing of said original bill they have each disposed of whatever interest they had in said funds or in said proceedings.

3d. That the original bill of said MacManus, and the amendment and supplement thereto, related to the same matters and things that the cross-bill of this complainant does, and affected the same parties. They set forth the various interests to and control over the said funds of the said several parties complainant and defendant, and prayed, among other things, for the appointment of a receiver by the court to take charge of the said funds, and for an order of injunction, restraining each and all of said parties from demanding, accepting, or paying over said moneys until the court might establish by its decree the respective rights of the several parties to the same.

4th. That the issues have not yet been joined between the parties, or any of them, to said original bill of complaint of the said McManus, and no proceedings have been had thereon, other than the issuance and service of process, and the allowance by the court of the restraining order of injuction, and the service thereof on the respective parties.

5th. That on or about the 28th day of December, 1869, the defendants, Mildred Standish, Mary Ann Conrow and S. Kearney Parsons, then having claims against the Republic of Mexico, entered into several contracts in writing with one Richard H. Musser, of St. Louis, Mo., and thereby agreed to employ said Musser to prosecute their said several claims, and thereby agreed to allow said Musser, as compensation for his services and expenses in that behalf, the one-half part of whatever sums might be recovered or awarded on account of said claims; that the said several parties then made and executed letters of attorney to said Musser, for the purposes aforesaid, with full power of substitution, which letters of attorney were coupled with an interest, were irrevocable, and are on file in the Department of State of the United States.

6th. That thereafter, and on or about the fourth day of January,

1870, the said Musser, by virtue of the authority vested in him, as aforesaid, substituted the defendant, Richard H. Porter, in his stead, giving him as full authority in the premises as he himself had, and assigned to said Porter his (Musser's) entire interest in claims, for the purpose af obtaining advancements of money and of employing counsel to prosecute said claims, by an instrument of writing, which was duly filed with the papers in the several cases in the Department of State.

23

7th. That afterwards, and on or about the 16th day of February, 1870, the said Porter, by virtue of his authority aforesaid, and in consideration of the professional services to be performed, and the moneys to be advanced in and about and on account of the prosecution of said claims before the commission then convened in the city of Washington by Charles E. Rittenhouse and Samuel A. Peugh, entered into a written contract with them, said Rittenhouse and Peugh, which contract is made an exhibit in complainant's original cross-bill, and thereby agreed to give them, for such services and advancements, the one-half of all the fees that he, the said Porter, was entitled to dispose of, which amount that said Porter was so entitled to dispose of was fifty per cent. of the entire awards.

8th. That the said Peugh, together with said Rittenhouse, immediately after the execution of said contract, entered upon the prosecution of said claims, expended his time and money, and exerted his best professional skill as a lawyer in the management thereof, employed Charles H. Winder, a skilful counsellor, to assist him, and succeeded in recording the allowance of awards, amounting to the sum of $42,486.30, on claim No. 385, in favor of said Standish, of $50,499.26, on claim No. 392, in favor of said Conrow, and of $50,888.70, on claim No. 397, in favor of S. Kearney Parsons, amounting in the aggregate to the sum of about $143,874.26.

9th. That some time subsequent, and after the larger part of the said services had been performed, the said Rittenhouse relinquished his individual interest in said contract, on the fraudulent and false representations of said Porter to him, as the said Rittenhouse alleges, and permitted the said contract to fall into the hands of the said Porter. On learning of the surrender of said contract your complainant demanded its return from said Rittenhouse and Porter, and the said Porter frequently promised, but failed, to return the same. On the 16th inst. your complainant first learned that said Porter had filed contract in the Department of State, and avers that said filing was without his knowledge or consent, and in fraud of his rights.

10th. That the services of your complainant consisted of varied and extensive professional labor, and required the expenditure of considerable sums of money, the said services extending over a series of years, and up until the said——

11th. That subsequent to the said contract between said Musser and Porter, mentioned in the said 6th paragraph of this amendment, the said Porter obtained other powers of attorney from the said Standish and Parsons, but not from Conrow, as your complainant is advised, authorizing him to prosecute said claims, and to dis-

pose of the one-half of the awards that might be recovered as his fees therein.

12th. That all the services and labor bestowed and expenses incurred by this complainant were with the full knowledge and at the request of said Porter, and also with the full knowledge and consent of the said claimants and the said Musser, their agent and attorney-in-fact.

24 13th. That the said Porter also employed, on or about the 21st day of April, 1874, the said Thomas P. McManus by an instrument in writing to procure certain testimony of witnesses resident in Mexico, and agreed to pay said MacManus for his services out of the said awards the one-fifth part of the fees which he was entitled to dispose of, amounting, in the recoveries had, to some $14,000 or more.

14th. That your complainant is advised that said MacManus afterwards entered into said agreement with said Porter, and on or about the — day of ——, 187—, obtained a loan from T. W. Bartley and Samuel E. Jenner, partners in the name of Bartley and Jenner, for some $500, and assigned to said Bartley and Jenner an interest in his said contract with Porter, to secure the payment of the same; and the said Bartley and Jenner afterwards, and before the filing of complainant's cross-bill herein, assigned all their interest in the same to said T. W. Bartley, who still holds said assignment as a subsisting obligation in his favor.

15th. That the said McManus, as your complainant is advised, on or about the 9th day of July, 1878, obtained a further loan from the defendant, Jack Brown, in the sum of about $900, and, to secure the same, assigned an interest in his said contract with said Porter, which is still a subsisting obligation.

16th. That after your complainant, in connection with others, had procured the allowance of the said awards, and before any part of the moneys was paid over, the said Porter, with intent to defraud your complainant out of his rights, combined and confederated with said White, a resident and speculator in the city of New York, and undertook to assign to said White fifty per cent. of the entire awards, being the whole of his original interest in the same. At the time of the said pretended assignment the said White well knew of the rights of your complainant in and to said funds, and made the pretended purchase of said Porter in fraud of the same. The said White also pretended to purchase the interests of other claimants with the like fraudulent purpose of getting control of the entire fifty per cent. of said awards, and to defraud your complainant of his rights.

17th. That a large amount of money is now in the hands of the said William M. Evarts, Secretary of State, being about twenty-one per cent. of the entire amount of the said awards, and there are large sums hereafter to be paid in annual installments on account of said awards.

18th. That the said money is now held by the said William M. Evarts, Secretary of State, in trust for the distribution among the rightful claimants thereto; and the said S. V. White and the said

Porter, and the defendants, other than said Evarts, are clamorous to get possession and control of the whole of said moneys.

25 The said moneys ought, in justice and equity, to be distributed among the several claimants in accordance with their respective rights and equities; and the said defendants who are seeking to get possession of the same are all now residents of this District, where the ordinary process of the law side of this court for the collection of money will not reach them; and some of said defendants are insolvent, and without the interposition of your honorable court, as here invoked, your complainant will be remediless at common law and will suffer great and irreparable loss and damage. Wherefore your complainant humbly prays—

(1.) That his lien may be established and decreed upon said fund.

(2.) That the said S. V. White and Richard H. Porter and all others of the said defendants may be prevented and restrained by the order and injunction of this honorable court from claiming said fund, or any part thereof, and from receiving the same into their custody or possession.

(3.) That the defendant, William M. Evarts, may be restrained and enjoined from paying said fund, or any part thereof, over to said claimants, or any of them, until the further order of this court; and that he may be required to pay over the said moneys at once into the registry of this court, or into the hands of a receiver to be appointed by the court for such purpose.

(4.) That said assignment to said White by said Porter and others may be decreed to be subject to the rights and equties of this complainant.

(5.) That due process may issue against each and all of said defendants, requiring them to appear and answer the exigencies of this amended cross-bill.

(6.) And for such other and further relief as the complainant is entitled to have in equity and good conscience.

And the complainant will ever pray.

The defendants to the amended cross-bill are the following, to wit:

Mildred Standish, Mary Ann Conrow, S. Kearney Parsons, Richard H. Porter, S. V. White, Charles H. Winder, Charles E. Rittenhouse, Thomas P. MacManus, Thomas W. Bartley, Jack Brown, and William M. Evarts, Secretary of State of the United States.

BARTLEY AND SOUTHARD,
Solicitors.

Samuel A. Peugh, being duly sworn, deposes and says: That he has read the above amended cross-bill by him subscribed, and knows the contents thereof; that the matters and things therein stated as of his personal knowledge are true, and those therein stated on information and belief he believes to be true.

S. A. PEUGH.

Sworn to and subscribed before me, on the 26th day of April, 1879.

R. J. MEIGS,
Clerk S. C. D. C.,
By R. J. MEIGS, JR., *Ass't.*

26 In the Supreme Court of the District of Columbia.

THOMAS P. MACMANUS
vs.
MILDRED STANDISH, S. V. WHITE, *et al.* } No. 6382. Eq. Doc.

This cause coming on to be heard on the motion of the defendant, Samuel A. Peugh, by his counsel, for leave to file an amended cross-bill, thereupon it is, on this 26th day of April, 1879, ordered that leave to file said amended cross-bill be granted. And it is further ordered and decreed that a restraining order issue in its usual form, returnable on Saturday next, the 3d day of May, restraining the defendants as prayed in said amended cross-bill.

By the court: MACARTHUR, *Justice.*

Supreme Court of the District of Columbia.

THOMAS P. MACMANUS, Claimant,
vs.
MILDRED STANDISH, S. V. WHITE, *et al.*,
Defendants. } No. 6382. Equity Doc. 18.

Comes now the defendant, S. V. White, in the above-entitled action, in his own proper person, and enters his appearance in said cause, and asks for such time to plead, demur, or answer as may be consonant with equity and the rules of this honorable court.

S. V. WHITE,
Def't in person.

In the Supreme Court of the District of Columbia.

THOS. P. MACMANUS, Complainant,
vs.
MILDRED STANDISH *et al.*, Defendants. } No. 6382. Eq. Doc.

The defendant, Samuel A. Peugh, by Bartley and Southard, his counsel, moves the court for an order upon the defendant, Richard H. Porter, to produce for inspection, and as necessary evidence in the case, the following documents and writings, to wit: Certain letters written by the defendant, Richard H. Musser, and addressed to and received by the defendant, Charles E. Rittenhouse, touching the matters in issue in this cause, and bearing date, respectively, as follows:

One dated March 20th, 1870.
" May 24th, "
" " 28th, "
" " 30th, "

One dated January 23d, 1871.
" February 6th, 1871.
" March 1st, "
" " 9th, "
" " 20th, "

The said letters are now in the possession or power of the said Porter, as said Peugh believes and charges, and contain evidence pertinent to the issues herein, and are necessary to enable this defendant to prepare for and try the issues raised by his original and amended cross-bill filed in this cause.

SAMUEL A. PEUGH,
By BARTLEY AND SOUTHARD,
His Counsel.

27 The said Samuel A. Peugh, being first sworn in due form of law says: That the matters and things stated in his foregoing motion are true; and he further deposes and says: That the letters mentioned in his said motion are now wrongfully withheld by said Porter; that they are material in this that they relate to the transactions in issue and explain them, and are evidence of the knowledge on the part of said Musser and Porter of the acts done and services performed by this deponent in relation to the prosecution of the claims in question in said case.

SAMUEL A. PEUGH.

Sworn to before me, and subscribed in my presence, this 5th day of May, 1879.

R. J. MEIGS, *Clerk*,
By M. A. CLANCY,
Ass't Clerk.

Filed May 31, 1879.

Order.

McMANUS *vs.* STANDISH. } No. 6382.

This day this cause came on to be heard on the motion of Samuel A. Peugh for the production of certain writings mentioned in said motion, and was argued by counsel; whereupon the court being duly advised in the premises, considered said motion not well taken, and overruled the same.

By the court: MACARTHUR, *Justice.*

Supreme Court of the District of Columbia.

THOMAS P. MACMANUS Plaintiff, *vs.* MILDRED STANDISH *et al.* Defendants. } Demurrer in Equity. No. 6382.

The demurrer of the defendant, Stephen V. White, to the bill of complaint, amended and supplemental bills of complaint of the above-named plaintiff. This defendant by protestation, not confess-

ing all or any of the things in the said plaintiff's bill, amended bill, and supplemental bill, contained, to be true in such manner and form as the same are herein set forth and alleged doth demur thereto, and for cause thereof saith:

1st. The said bill, amended bill, and supplemental bill are each multifarious in this, to wit: Three distinct causes of action, if action existed based upon separate contracts between different parties, in which there is no unity of interest are joined in one action.

2d. Plaintiff does not show any lien under contract against either fund named in the three several contracts in said bill enumerated, which this honorable court can in equity be asked to enforce.

3d. It is the province of this honorable court in equity only to enforce a lien, not to create one, as by complainant's bill, amended and supplemental bill is sought.

4th. The said plaintiff has not in and by his said bill made a case that comes within the jurisdiction of this honorable court.

28 5th. The plaintiff hath a plain, speedy and adequate remedy at law.

6th. That the plaintiff's said bill, amended bill, and supplemental bill, in case the same were true, which this defendant doth in no wise admit, do not contain any matter of equity wherein this court can ground any decree or give the plaintiff any relief as against this defendant. Wherefore and for divers other good causes of demurrer appearing in the said bill, this defendant doth demur thereto and doth pray judgment of this honorable court, whether he shall be compelled to make any further or other answer to said bill, amended bill, and supplemental bill, and he humbly prays to be hence dismissed with his reasonable costs.

S. V. WHITE (in person.)

The undersigned, a counsellor of the Supreme Court of the United States appearing in his own defense and having no solicitor or other counsel in said cause, doth on his obligation as such counsellor certify that the foregoing demurrer is in his opinion well founded in point of law.

S. V. WHITE,
Of Counsel in his own behalf.

STATE OF NEW YORK, }
Kings County, } *ss:*

I, Stephen V. White, defendant above named, do solemnly swear that the foregoing demurrer is not interposed for delay.

S. V. WHITE.

Subscribed and sworn to before me, this fourth day of June, 1879.

[SEAL.] WM. E. WHITE,
Notary Public, Kings Co.

In the Supreme Court of the District of Columbia.

THOMAS P. MACMANUS }
vs. } No. 6382. Equity.
MILDRED STANDISH *et al.* }

Ordered by the court, this 7th day of June, 1879, upon motion of

Charles H. Winder, one of the defendants in this cause by his solicitor and with the consent of counsel for the complainant, that so much of the order passed in said cause on the 17th day of May, A. D. 1879, as takes the bill of complaint in said cause for confessed as against the said Charles H. Winder, be, and the same is hereby, vacated and held for naught.

By the court: MACARTHUR, *Justice.*

I hereby consent to the above order, this 7th June, 1879.

M. J. SOUTHARD,
Of Counsel for Complainant.

29 In the Supreme Court of the District of Columbia.

THOMAS P. MACMANUS
vs.
MILDRED STANDISH *et al.* } No. 6382. Equity.

The demurrer of Charles H. Winder, one of the defendants in the above-entitled cause.

This defendant, by protestation, not confessing all or any of the matters and things in the said plaintiff's original and amended and supplemental bills contained, to be true in such manner and form as the same are therein set forth and alleged, doth demur to the said bills, and for cause of demurrer says:

That the said plaintiff has not in and by his said bills made a case that comes within the jurisdiction of this honorable court. That the plaintiff's said bills, in case the same were true, which this defendant does not admit, contain not any matter of equity whereon this court can ground any decree or give the plaintiff any relief or assistance as against this defendant.

Wherefore and for divers other causes of demurrer appearing in the said bills, this defendant demurs thereto, and he prays the judgment of this honorable court whether he shall be compelled to make any further or other answer to the said bills; and he prays to be hence dismissed, with his reasonable costs in this behalf most wrongfully sustained.

C. INGLE, *Sol. for Def't.*

I hereby certify that, in my opinion, the foregoing demurrer is well founded in point of law.

C. INGLE,
Counsel for Defendant.

I, Charles H. Winder, the above-named defendant, do solemnly swear that the foregoing demurrer is not interposed for the purpose of delay.

CH. H. WINDER.

Subscribed and sworn before me June 7, 1879.

R. J. MEIGS, *Clerk,*
By R. J. MEIGS, JR., *Ass't.*

Restraining Order.

Hearing on prayer of said cross-bill 1879. Until then you are restrained as prayed.

By order of the court: MACARTHUR, *Justice.*

Attest:

R. J. MEIGS, *Clerk.*

——— ———, *Assist. Clerk.*

The original subpœna was served on me on or about the 28th April last.

C. E. RITTENHOUSE.

30 THOMAS P. MACMANUS *vs.* STEPHEN B. WHITE *et al.* } 6382. Equity.

This cause, coming on to be heard at this term of the court on the bill and supplement thereto and the demurrer of the defendant White, was argued by counsel and submitted; whereupon, and upon consideration thereof, it is this 24th day of October, A. D. 1879, ordered, adjudged, and decreed that the demurrer be, and the same hereby is, overruled. And it is further ordered and decreed that said defendant, Stephen V. White, shall, within twenty days, answer the bill of complaint and supplement thereto.

By the court: MACARTHUR, *Justice.*

The Answer of Stephen V. White.

THOMAS P. MACMANUS, Complainant, *vs.* MILDRED STANDISH, Defendant. } Equity Docket. No. 6382.

This defendant, now and at all times hereafter saving and reserving to himself all manner of benefit and advantage of exception to the many errors and insufficiencies in the complainant's said bill of complaint and amended and supplemental bill contained, for answer thereto, or to so much and such parts thereof as he is advised is material for him to answer—

He admits that in the year A. D. 1869 the said defendants, Standish, Conrow, and Parsons, having claims against the Republic of Mexico, severally, made contracts with the defendant Musser, whereby they employed him to prosecute their said claims, and agreed to allow him one-half of the several amounts which he might collect for such claimant in each several case for his services as such attorney. And this defendant admits that the defendants above named as claimants executed severally each a power of attorney authorizing him to act for such claimant, which power of attorney in each several case was by its terms irrevocable, and coupled with an interest in the claim to be prosecuted. And the defendant admits that the said letters of attorney conferred powers of substitution.

And defendant, further answering, denies expressly, upon information and belief, that said defendant Musser ever assigned any interest

in said contract or claim against Mexico to said defendant Porter, or to any other person except to this defendant.

This defendant admits that for the purpose of enabling Porter to raise money, or for other purposes unknown to this defendant, said Musser wrote on the several powers of attorney which had been severally executed to him the words in substance, "Richard P. Porter is authorized to act, and substituted under the powers hereinabove given," and signed the same, and entrusted the said powers of attorney to said Porter. And this defendant avers, on information and belief, that said Porter, having failed in the object for which he received the same temporarily from said Musser, did shortly thereafter return each of said letters of attorney to said Musser, and that the same were never thereafter delivered to him, but afterwards came into said defendant Porter's possession by the unlawful and surreptitious act of said Porter without said Musser's consent, and that such substitution was never executed and delivered lawfully to said Porter.

31

This defendant admits on information that Porter employed the defendant Winder, but denies on information that he agreed to give him a percentage of the fees, and denies expressly that he had any authority to so contract in the premises.

And defendant, further answering, admits on information and belief that the said Porter, about February 16th, 1870, did execute a certain contract with the defendants, Rittenhouse and Peugh, in which they falsely recited that said Porter, by a contract with the claimants, Standish, Parsons, and Conrow, was entitled to a moiety of whatever sums might be awarded before a joint commission, and in which the said Rittenhouse and Peugh covenanted to be at the expense of prosecuting the said claims before the commission, and in which the said Porter covenanted to assign one-half the amount said Porter was entitled to receive in the premises.

And this defendant expressly avers upon information and belief that said Porter was not entitled to receive anything, and that defendants, Peugh and Rittenhouse, did not pay the expense of prosecuting said claims before the said commission, and this defendant, further answering, admits that on or about April 21st, 1874, the defendant Porter made a contract in writing with complainant McManus, but this defendant expressly denies that the said Porter either assigned or pretended to assign any interest in the claims or funds whatever. But defendant avers that the said writing is the joint undertaking of the defendants, Porter and Winder, in case any award was made in favor of said claimants, to pay to complainant one-fifth of the whole fee agreed to be paid by the claimants, as will fully appear by reference to the complainant's exhibit, to which this defendant begs respectfully to refer.

And this defendant expressly charges on information and belief that there was no consideration for the promise of said defendants even if such promise were made, and upon information and belief he denies all averments by the said complainant in the IV paragraph of his original bill except as admitted herein.

This defendant, further answering, says that he denies on informa-

tion and belief that there was any agreement between said Porter and said Musser when said Porter was substituted, and denies on information that there was any other than a formal substitution for a temporary purpose, which substitution was not finally executed or delivered.

This defendant, further answering, can neither admit nor deny that the defendant Musser knew of the many and promiscuous contracts which said Porter was making, but denies upon information that he ever ratified any of them.

32 The defendant, further answering, can neither admit nor deny that complainant McManus has assigned his claims to defendants, Bartley and Brown.

This defendant, further answering, admits that several awards were obtained, as stated in complainant's bill, in favor of said several claimants, and that certain moneys are now in the hands of the Secretary of State awaiting distribution.

This defendant, further answering, admits that in the year A. D. 1872, the defendants, Standish, Parsons, and Conrow, severally made separate contracts with the defendants, Pike and Johnson, whereby they agreed severally to pay them 25 per cent. of such award as should severally be awarded to each of them, in consideration of their services as attorneys, and gave them a power of attorney irrevocable, and that afterwards defendant Standish filed in the Department of State a general revocation of all powers to Musser as charged.

This defendant, further answering, denies that any assignment, or pretended assignment, was ever made by defendant Porter to this defendant of the claims of Conrow *vs.* Mexico.

And further answering, this defendant says that about Sept. 20th, 1876, the defendant, Richard H. Porter, offered to him in New York an exemplified record of the judgment of S. Kearney Parsons *vs.* Mexico, for the sum of fifty thousand eight hundred twenty-eight and $\frac{76}{100}$ dollars, accompanied by an original contract and original power of attorney, bearing date March 12, 1874, whereby said Parsons conveyed to him a moiety of any award that might be made in his favor against Mexico, and appointed him attorney-in-fact irrevocable to prosecute and collect said claim. That thereupon, at the instance of said Porter, this defendant bought the interest of said Porter in said award for the sum of seven thousand dollars, which he then and there paid him, and took an assignment of said Porter's claim in the premises, and filed all said original papers with the Secretary of State of the United States at Washington.

And this defendant expressly avers (such is fame) that at that time he had never, either directly or indirectly, heard of complainant, or of any one of his numerous co-defendants, except defendants Parsons and Porter, and except also by reputation of Pike and Johnson and Wm. M. Evarts; nor had he thought (such was his simplicity) that there was any claim adverse to his by any one whomsoever, and defendant supposed that the only risk he took in the purchase was that of the bankruptcy of poor, distracted Mexico,

upon which he reluctantly risked about twenty-five cents on the dollar.

And defendant, further answering, says that about June 19th, 1877, at New York, upon a like exemplification contract, for a moiety and power of attorney irrevocable, he bought for the sum of five thousand dollars, of said Porter, his, said Porter's, claim to the award of Standish *vs.* Mexico, amounting, as shown by the exemplification, to the sum of $42,486.30 (forty-two thousand four hundred and eighty-six $\frac{30}{100}$).

33 That at the date of said purchase, and for a long time thereafter, this defendant had no notice of any adverse claim or assignment, and that he bought it in good faith for $5,000, supposing that the only business risk attending it was the bankruptcy of the Republic of Mexico. That at that time, by his deed of assignment, said Porter expressly covenanted that he had not made any adverse assignment, and made affidavit that he had performed the services as attorney in the premises, and that half of said award was due him therefor whenever the same was paid by Mexico; all of which will appear in the archives of the State Department at Washington.

And this defendant, further answering, avers that some time thereafter said Porter offered to sell to this defendant his interest in the award of Conrow *vs.* Mexico, and the same was rejected by this defendant because the same had never been assigned to him and he did not appear to have ever had any interest therein. This defendant does not know, and therefore can neither admit nor deny, that all his co-defendants are insolvent; but, for himself, he denies the allegation; and all things inconsistent with the averments of this answer in complainant's bill contained he denies.

This defendant, further answering, says that having learned the true condition of the causes, and that the powers of attorney and contracts under which he had bought the awards of Parsons *vs.* Mexico and Standish *vs.* Mexico were dated years after those to Musser and Pike and Johnson were executed, which prior powers were irrevocable and coupled with an interest, and that the contracts had been acted under by said Pike and Johnson and Musser, this defendant did, on or about February 12th, 1879, purchase the entire interest of said Pike and Johnson and Musser, for the sum of twenty-nine thousand dollars cash and one thousand dollars to be paid when the first awards are collected, which purchase covered their entire interest in the three several awards of Parsons *vs.* Mexico, Standish *vs.* Mexico, and Conrow *vs.* Mexico.

This defendant expressly denies all combination and confederation with Porter. He denies, upon information and belief, that Musser ever employed defendant Winder or complainant, and avers that if he did he should be held responsible in law for his contracts. And this defendant expressly denies the power of any court of equity to make a contract for any of the parties different from what they made for themselves; denies that any lien on the several funds was ever created by the contract of complainant, and denies that this defendant is concealing or aiding Porter to conceal anything and

all things whatsoever in the amended and supplemental bill are contained which are not consistent with this answer, this defendant unequivocally denies.

34 All which matters and things this defendant is ready to aver, maintain, and prove, as this court of equity shall direct; and he humbly prays to be hence dismissed, with his costs and charges, wrongfully sustained, and that the complainant may be decreed to take nothing by his bill.

S. V. WHITE (in person).

S. V. WHITE,
Of Counsel for Himself.

UNITED STATES OF AMERICA,
Southern District of New York, } *ss:*

Stephen V. White, defendant, being first duly sworn, deposes and says that he has read the foregoing answer and knows the contents thereof, and that the same is true, of his own knowledge, except to the matters therein stated to be alleged upon information and belief, and as to those matters he believes it to be true.

S. V. WHITE.

Sworn to before me this 11th day of November, A. D. 1879.
[SEAL.] JOHN A. SHIELDS,
U. S. Commissioner, Southern Dis. N. Y.

THOMAS P. MACMANUS
vs.
RICHARD H. PORTER *et al.* } 6382. Eq. Doc. 18.

Ordered by the court this 26th day of January, 1880, upon motion of the defendant, Charles H. Winder, by his solicitor, that said defendant have leave to withdraw his demurrer heretofore filed in this cause, and to answer the original bill and bill of amendment and supplement in the said cause.

CH. P. JAMES, *Justice.*

In the Supreme Court of the District of Columbia.

THOMAS P. MACMANUS
vs.
RICHARD H. PORTER *et al.* } No. 6382. Equity.

The separate answer of Charles H. Winder, one of the defendants in the above-entitled cause, to the bill of complaint and amended and supplemental bill of Thomas P. MacManus.

This defendant admits that the defendant Porter employed this defendant as counsellor, and agreed to pay him a portion of the one-half of the claims mentioned in said original bill for his professional services, as alleged in said original bill. Said portion was five per centum of the aggregate amount which might be recovered by reason of said claims. This defendant admits that the said Porter, with

the consent of the claimants named in said original bill, had full authority from the defendant Musser to employ this defendant as counsel for said claimants before the Mexican and American Commission, and that said Musser knew of the said employment of this defendant, and did, by frequent acts before the appearance of the defendants Pike and Johnson in said claims cases, ratify, con-
35 firm, and allow the said employment of this defendant, and adopt his work before the said commission, as alleged in said amended and supplemental bill. Afterwards, and before this defendant's said agreement with Porter was reduced to writing, the letters of attorney procured by said Musser, as stated in said original bill, were revoked, and at the same time said Porter was, by other letters of attorney given to him, directly in his own name by said claimants invested with full authority to employ this defendant, and to contract with him as aforesaid. This defendant was the sole counsel ever so employed, or who ever actually performed any service as such.

This defendant hereby refers to and makes part of his answer a bill of complaint heretofore exhibited by him in this court against the said Thomas P. MacManus and others, in cause No. 7011, equity, which said cause is still depending in said court, and which, by an order passed therein December 22, 1879, was consolidated with this cause.

And having fully answered, this defendant prays to be hence dismissed, with his reasonable costs.

C. INGLE,
L. G. HINE,
Solicitors for Defendant.
JESUP MILLER, *P. Q.*

Affidavit waived.

In the Supreme Court of the District of Columbia.

THOMAS P. MACMANUS
vs.
RICHARD H. PORTER *et al.*
No. 6382. Equity.

The plaintiff hereby joins issue with the defendant, Chas. H. Winder.

JESUP MILLER, *Solicitor.*

In the Supreme Court of the District of Columbia.

THOMAS P. MACMANUS
v.
MILDRED STANDISH *et al.*
No. 6283. Equity.

Now comes the defendant, Thomas W. Bartley, and in answer to the bill of complaint, admits that the allegations therein set out are true, and is willing that the relief prayed or other appropriate relief may be granted.

THOS. W. BARTLEY,
By M. I. SOUTHARD, *Sol'r.*

(Endorsed:) Filed Mar. 1st 1881, by order of court.

36 In the Supreme Court of the District of Columbia.

McMANUS
vs.
WHITE *et al.* } No. 6382. Ex. Doc. 18.

At an examination held before me, an examiner in chancery in this cause, commencing January 13th, 1880, personally appeared the witnesses within named, on call of the plaintiff, and after the witnesses were duly sworn the within depositions were written down from the statements of the witnesses, read to them and signed by them in my presence.

JNO. CRUIKSHANK,
Examiner in Chancery.

In the Supreme Court of the District of Columbia.

McMANUS
vs.
WHITE *et al.* } No. 6382. Equity.

JANUARY 12—2 p. m.

Met pursuant to notice.

Present: Counsel for complainant.

Whereupon the examination was adjourned to January 13, at 3 p. m.

JANUARY 13, 1880—3 p. m.

Met pursuant to adjournment; whereupon

THOMAS P. McMANUS, the complainant, being sworn, deposed and says:

I disremember the date—but in 1873 Doctor Porter came to me and asked me (the def't, R. H. Porter) if I knew anything of the shooting of Conrow, Parsons, and Standish in Mexico. I told him I was on duty for the Government of the United States in Mexico at the time said parties were shot, being about the 16th of August, 1865; the matter of the shooting of them was first mentioned to me by Mr. Jo. Ulrich, U. S. consul at Monterey. I was afterwards informed of the fact of the shooting by Mexican officers, who very much regretted the fact. I then became collector of customs from the fall of 1865 on the Rio Grande, until the latter end of 1867, and while there became acquainted with Don Pedro Valdez, who commanded the guard on the Mexican side of the river. Said Valdez told me frequently that he was the half brother of Colonel Planton Sanchez, and I afterwards heard it from other parties; the regiment of said Sanchez being the troops that shot the said parties as represented to me. Afterwards, here in Washington, some time in 1873, I related to Col. Gist the matter of the shooting of these parties in Mexico, and after this Dr. Porter came to me to inquire what I knew about it. I told him the story as I heard it from the U. S. consul and Mexican officers on the Rio Grande. He then asked me to make a statement in writing and swear to it, as to what I had heard or knew

about it. I *dore* this at the Columbia Hotel after which Charles H. Winder came to receive it and to examine it. After examination and briefing it, I testified to it and turned it over to him gratis, I mean to Mr. Winder. After this Mr. Winder, in com-
37 pany with Dr. Porter, met me at the National Hotel. Mr. Winder represented that all the testimony they had—all the testimony that I gave, and all the testimony they had was merely hearsay testimony and that the Government of Mexico, through its attorney, or counsel, was about to establish an alibi, from the fact that it produced the war records and the testimony of General Escobedo to show that the regiment commanded by Colonel Sanchez, whom the claimants alleged had shot said parties on the San Juan river, on or about the 15th August, 1865, was in the city of Chihuahua on that date, and that the distance between the river San Juan and the district of Nueva Leon and Chihuahua was 900 miles, and that it would be required to obtain the testimony of some of the officers and soldiers that were in Sanchez' command at the time the murder was committed. I then told them that my influence in Mexico was such that I could get them such testimony if they could bear the expense of it. They replied that they did not have any money, but that if I got such testimony at my own expense they would give me an interest in the fees.

I will state here that the rendition of the services afterwards, which I rendered was not solicited on my part, but I then entered into a parole agreement with them at their solicitation and obtained the testimony they required. I asked Mr. Winder for to write the testimony and in doing so to place himself on the San Juan river as though that he was a soldier under the command of Col. Sanchez, who was stationed on the San Juan river on the 15th of August, 1865, and that while this testimony might be somewhat changed but not materially in its features, yet he would obtain the testimony to show that it was the command of Col. Sanchez that shot the parties on the said date on the said river. I forwarded this memora-dum to Don Pedro Valdez through Mr. Stone at Eagle Pass, and requested that said parties obtain the testimony of some of the officers and soldiers of this command. I placed this memorandum in English, which was returned with the testimony of some of the soldiers that were in said Sanchez' command, and it was taken under the seal of a court of record in Mexico in the hands of Charles H. Winder, Esq. This was done some time in the fall of 1873. Some two months afterwards Charles H. Winder wrote in his own handwriting the original executed agreement which I now hold, giving me one-fifth of all the fees. I gave this agreement to Judge Bartley, and suppose it is filed in the Department of State.

This is my connection with the cases and in such connection I have ever found Charles H. Winder, during my connection with the case, or while they were in embryo, before the commission, and also Dr. Porter to be persevering and energetic in hunting up testimony and so forth to establish the claims of the petitioners.

(Counsel for plaintiff here produces paper marked Exhibit Pl'ff No. 1, and offers it in evidence.)

38 EXHIBIT PL'FF, No. 1.

UNITED STATES OF AMERICA, DEPARTMENT OF STATE.

To all whom these presents shall come greeting:

I certify that the documents hereto annexed are true copies from the files of this Department.

In testimony whereof I, William M. Evarts, Secretary of State of the United States, have hereunto subscribed my name and caused the seal of the Department of State to be affixed.

Done at the city of Washington, this 22d day of July, A. D. 1879, and of the Independence of the United States of America one hundred and fourth.

WM. M. EVARTS.

True copy.

This agreement, made this 21st day of April, in the year 1874, between Richard H. Porter and Charles H. Winder of the first part, and Thomas P. MacManus, of San Antonio, Texas, of the second part. Whereas the said Richard H. Porter is attorney-in-fact of Sarah Mildred Standish, Mary Conrow, and S. Kearney Parsons, the widow, and son and heir-at-law, respectively, of Austin M. Standish, Aaron H. Conrow, and Monroe M. Parsons, who was murdered by the military authorities of Mexico, near the Rio San Juan, in the State of Nueva Leon, in Mexico; and whereas a proceeeding is now pending before the American and Mexican Joint Commission for indemnity to said widows and son on account of the murders aforesaid; and whereas the said Thomas P. MacManus has procured from Mexico testimony establishing the facts set forth in the memorials of the said widows and son: Now, therefore, for and in consideration of the premises the parties hereto, of the first part hereby agree and bind themselves that in the event of awards of indemnity being decreed by said Joint Commission, to pay over to the said Thomas P. MacManus one-fifth of the whole fee agreed to be paid by the said petitioners for recovery of their respective claims.

(Signed) R. H. PORTER,
Attorney-in-Fact.
CH. H. WINDER,
Of Counsel.

Witnesses:
W. S. LEMON.
JNO. A. RAWLINGS.

39 Memorandum of agreement, made by and between Richard H. Porter, of St. Louis, Mo., and Charles E. Rittenhouse and Samuel A. Peugh, of this city of Washington, District of Columbia.

Whereas said Richard H. Porter, acting as attorney for Richard H. Musser by authority of substitution from said Musser, who, acting in behalf as attorney-in-fact for Mildred Standish, widow of Austin M. Standish; Mrs. —— Conrow, widow of Aaron H. Conrow, and —— Parsons, father of Monroe M. Parsons, and guardian of the

son Monroe M. Parsons, above named, all of the State of Missouri; and whereas said Porter is desirous of the aid of said Rittenhouse and Peugh in a certain advance of money to the said Porter, to enable him to procure the testimony to sustain the claims of these other certain named parties have against the Government of Mexico for robbery and destruction of the lives of those whom they represent under the treaty made between the United States and the Republic of Mexico on the 4th day of July, 1868, and also the prosecution of said claim before a commission appointed by and between the two said Republics, and now in session in the city of Washington, D. C.; and whereas said Porter being, in his agreement with the said parties claiming against Mexico as aforesaid, entitled to one-half of any amount to which he may establish claim before said commission, he hereby agrees to, and does hereby transfer and assign, in consideration of the premises, unto the said Rittenhouse and Peugh one-half of the amount he is entitled to receive under and by virtue of his authority in the premises, the said last-named parties to be at the expense of prosecuting the said claims before the commission herein named, but the testimony to be produced to them by the said parties.

In testimony whereof, we, and each of us, have hereunto set our hands and seals, this 16th day of February, 1870.

(Signed) R. H. PORTER. [SEAL.]
S. A. PEUGH. [SEAL.]
C. E. RITTENHOUSE. [SEAL.]

WASHINGTON, *September* 2, 1872.

In consideration of said Porter's having paid certain expenses on the claim of Mrs. Hamilton for $35,000, now pending before the Southern Claims Commission, one-half of which he demands of me on account of my interest therein, I hereby relinquish to him, said Porter, all my right, title, and interest in and to the several claims referred to in the foregoing agreement, and release him from his obligation to repay me the sum advanced by me for my aforesaid interest in these Mexican claims.

(Signed) C. E. RITTENHOUSE.

40 Q. State whether or not you knew that anybody else had an interest in these fees; and, if so, who?

A. I have heard from Col. Gist that John Chiles was connected with Dr. Porter in these cases first. Col. Gist also told me that he was applied to by Doctor Porter and Chiles to prosecute the cases before the commission. This was at the time that I was approached upon the cases by Porter and Winder.

Q. Did you make any inquiry at the Department of State, or elsewhere, for the purpose of ascertaining who by assignments thereof were entitled to share in the fees derived from these cases?

A. I went to the rooms of the commission and seen a brief submitted in print by Charles H. Winder, signed by Charles H. Winder and Dr. Porter. I think it was signed by Porter; I am not sure. I know it was signed by Porter as of counsel. Charles H. Winder told me that Dr. Porter had the original powers of attorney in his

possession, given by the claimants to R. H. Musser, of St. Louis, and that on the back of these powers of attorney was written a power of substitution to Porter; and that Porter had in his possession also the original agreements made to Musser by the claimants giving to him, Musser, fifty per cent. on all amounts collected, and in fact I think they showed me the instruments in writing. They also told me of an interest made to Rittenhouse and Peugh in consideration of money advanced for the prosecution of the cases.

Q. Whom did you acquaint with the assignment to you?

A. I turned the original document over to Bartley and Jenner by letter, and asked that firm to inclose it to the Department of State, and place it on file, or a certified copy thereof, for my protection. This was done, and the receipt of the same acknowledged by the Department of State. I also informed Mr. White, of New York, one of the defendants in this cause, about the time that Dr. Porter had made sales to him, that I held an agreement, which was on file in the Department of State, for one-fifth of the fees.

Q. What claim of interest did you learn that Chiles had in the fees in these cases?

A. I was told by Col. Gist that John Chiles had first represented to Porter that such claims could be got up, and that on this representation Dr. Porter went to New York to gain information from Mr. Urbhan. As represented by Chiles, who was in the receipt of a letter from Mr. Ulrich, U. S. consul at Monterey, describing the murder, the time and place at which the murder took place in Mexico, and that upon this information Porter and Chiles undertook to prosecute the cases, and that Porter went to St. Louis, Mo., to get the power of attorney from the widows and heirs of the murdered parties, and that while in St. Louis he, Porter, employed R. H. Musser to draw the instruments in writing, and that after the return of Porter to Washington, D. C., he applied to Gist, who, it was originally intended, should be the local counsel here, and Chiles for $500, and that because they did not up with the money to defray his expenses to St. Louis, and so forth, he therefore dropped them from the cases, at least Gist from the cases, so he told me.

41 Q. Did you learn from anybody else, or in any other manner than this conversation with Mr. Gist, that Mr. Chiles had any interest in the fees to be derived from the cases?

A. Yes; I heard it from Mr. Chiles himself and from Hon. Albert Pike that he claimed an interest in the fees. From nobody else that I remember, except from people talking about it currently on the street.

Q. Did Mr. Childs tell you exactly how much he claimed, or did anybody else tell you so?

A. I think Mr. Chiles told me that he and Porter were to divide fees equally after the fees were settled with Mr. Musser. I did not hear it from any other parties to my knowledge.

Q. Who actually did the work of prosecuting the claims before the commission?

(Counsel for def't Chiles objects to question, as calling for opinion of witness.)

A. I could not definitely say. I have heard from Mr. Winder repeatedly that it was he that represented the parties before the commission and done all the legal work.

Q. Did Mr. Chiles have anything to do whatever before the commission, or elsewhere, with the management of the cases so far as you know?

A. I do not know, sir, of my own knowledge; I did not hear of his rendering any service except the information in the origin of the cases.

Q. How long a time elapsed between the time that you turned over the depositions you obtained from Mexico and the signing by Porter and Winder of the contract with you?

A. I turned over the depositions under the original parole agreement to Charles H. Winder. He had the said depositions about two months, I think, before he executed the agreement I now hold.

Q. Were they translated from Spanish into English in the meantime?

A. It appears that it was translated by Rutledge Wilson, and that his bill for translation to Porter and Winder was presented on the 25th November, 1873, and that the agreement which I hold is dated April 21, 1874. I heard from Mr. Winder that the depositions were written in English before the agreement was signed.

(Examination adjourned to Friday, the 16th of January, 1880, at 2 p. m.)

JANUARY 16, 1880.

Met pursuant to adjournment.

Present: Counsel for all parties.

Whereupon the examination-in-chief of THOMAS P. MCMANUS is continued, as follows:

Q. State whether or not you knew of the Chiles claim when you entered into the agreement with Porter and Winder giving you an interest in the claims; and if yea, state what you did know about the same at that time.

A. I can answer that question now from definite recol-
42 lection. My impression is that I got introduced to Dr. Porter by Col. Gist. After I had told Gist what I knew of the murdering of these men in Mexico by the soldiers thereof, he (Gist) told me that Dr. Porter and Chiles had asked him to become attorney in the prosecution of these cases, and that, in fact, he had written the petitions of the claimants, but that after Dr. Porter returned from St. Louis, and related to him, Gist, and Chiles his connection with Mr. Musser, of said place, and made it a prerequisite, or what you might call it, that he, Gist, should come up with $500, or money to that amount, for the purpose of defraying the expenses of Dr. Porter to St. Louis and back to New York, and so forth, and that in consequence of their not furnishing the money that he, Porter, had dropped them from the cases, and went and employed other counsel, and so forth. This is the statement as related to me by Col. Gist, and all I know of the interest of Chiles.

(Whole of the answer objected to as hearsay, irrelevant, and inadmissible, by counsel for Dr. Porter.)

Cross-examined by Mr. J. J. JOHNSON on behalf of def't Porter:

Q. How long have you been living in this city?

A. I have been backwards and forwards to this city since I was 18 years old.

Q. When was the last time you were out of this city, and where did you go?

A. I was out at a ranch about 9 miles from here, on the Baltimore and Ohio railroad, on business in connection with General Coone.

Q. When were you last in Mexico?

A. I was not in Mexico since I resigned being collector on the Rio Grande, I think in 1867 or 1868; I have not charged my memory with the date.

Q. Look at exhibit marked Pl'ff No. 1, the original being on file in the State Department, and say from whom you received that paper, and was the same signed and witnessed in your presence?

A. The original is in the handwriting of Chas. H. Winder, Esq. It is in word and effect as this purports to be. As to whether the original is in the Department of State or not, I do not know. I turned over the original to Bartley and Jenner, and requested them to enclose it to the Secretary of State. I received it from Charles H. Winder, and it was signed by Mr. Lemmon and Mr. Rollings in my presence at the request of Mr. Winder.

Q. Did Mr. Porter sign that paper in your presence?

A. Yes, sir.

Q. Do you mean to say that the signatures there signed, "R. H. Porter, attorney-in-fact, Charles H. Winder," was written in the handwriting of Porter in your presence?

A. In my presence by both of them; by Porter first and Winder afterwards.

Q. When did you first learn of the death of Parsons, Conrow, and Standish?

43 A. I think it was on the 16th of Aug., 1865, on the Rio Chimo, in Mexico, some date there along. I have not charged my memory with the dates, nor have I kept a record of the dates, but it was in the month of August, 1865.

Q. How, when, and under what circumstances did you procure the alleged "*ex parte*" affidavits of certain witnesses in Mexico to be used in these cases?

A. I can answer that question, but it requires explanation. It involves a whole paraphernalia. My acquaintance in Mexico was then and now very extensive. I knew General Escobedo personally. I knew Col. Don Planton Sanchez personally. I knew Don Pedro Valdez, who, it is alleged, is a half brother of Colonel Sanchez, personally. I was requested by General E. R. S. Canbey to proceed to Mexico in August, 1865, at the city of New Orleans, and deliver to General Escobedo certain communications, and in connection with

this to pay certain firms in Mexico, F. Gross and Co., and Benjamin Long, certain money which was placed in my hands, in gold, for the purpose. Benjamin Long is now of Dallas, Texas, I think. It was in this way that I became acquainted with the murder of these men in Mexico, from these officers, then of the Mexican army, while I collected the customs on the Rio Grande from the fall of 1865 to 1867 or 1868, not charging my memory with the dates. I became acquainted with Don Pedro Valdez, who commanded the Mexican Customs Guard on the Mexican side of the river. I procured the affidavits through Capt. William Stone, of Eagle Pass, and Don Pedro Valdez, commander of the Custom Home Guard on the Mexican side of the Rio Grande?

Q. Look at the bill filed by you in this case, and tell me if that is your signature to the bill, and whether you swore to it?

A. This is my signature, and for the purposes of the bill I swore to it.

Q. In part of paragraph 3 of said bill I find the following allegation: "That the services of the complainant consisted in travelling at his own expense to great distances, the procuring the attendance of witnesses, the searching for and finding material facts in relation to said claims, having the proofs thereof and supplying translations of such depositions by competent interpreters, all done at great personal risk and pecuniary cost to the complainant." Now, I want to know the extent of your travelling, the expenses, the personal great risk and pecuniary cost for translations that you performed in accordance with your contract entered into with Porter.

A. My travels in this case at that time was in connection with other business, and to separate the actual cost of one from the other is difficult for me to do at this time. At the time I entered into the parole contract with Doctor Porter and Winder, or immediately after, I went from Washington city to Rocky Comfort, in the State of Arkansas, and from thence to San Antonio, Texas. From
44 the latter place I forwarded to Mr. William Stone, at Eagle Pass, on the Rio Grande, forms of affidavits drawn up by Charles H. Winder in English as to the testimony required from officers or soldiers who were in Sanchez's command at the time these people were murdered, and instructed Mr. Stone by letter that the object of the testimony was to disprove an alibi that the Government of Mexico had raised against the cases, that is to say, that those men were not murdered by soldiers of that country, or if they were then by marauders, and Mexico was not responsible; hence, I procured the testimony of soldiers who were in that command and turned it over to Charles H. Winder under the seal of a court of record in Mexico about 3 months before the date of my executed agreement, a copy of which is in Exhibit Pl'ff No. 1. The expense, therefore, mentioned in the bill of equity, as I was informed by letter from Mr. Stone, occurred in the translation, &c., of the depositions forwarded, and which was in the handwriting of Mr. Winder, and of the sending of couriers to the State of Nueva Leon and other parts to ascertain where some of the soldiers, or ex-soldiers, were, and that even after the return [of] these couriers to Piedras Ne-

gras it was found that the very soldiers they were after, or some of them, were in Piedras Negras. I do not known the amount of the expense accurately that has been incurred in the procuring of this testimony. At the time, and now there is an unsettled account standing between Mr. Stone and myself, and when I have run short of money I have drawn on him and he has honored my check. I have been informed by Mr. Stone of about the amount and he has paid it out of my money, because an account was open at the time.

In my letter to Mr. Stone I said to him that if he preferred I would interest him in that part of the fees coming to me, or given to me in case of an award. He did not answer that part of my letter until after he seen in the public prints that awards were made, and then he said he would hold me to it. Well, that is a fair thing. I will state here that as to the personal risk, Mr. Miller, the gentleman who drew the bill, had made a mistake in the time, or the personal risk to myself from the fact that I told him that my knowledge of the fact came nigh being my death, from the fact that sentence of death was passed against me in Mexico; that was in 1865, and that at the time of the verification of the bill and my signing my name thereto, I called the attention of Mr. Miller to that clause and he told me that in the reading of the clause it would not imply (*sic*) that I took the personal risk according to the construction of the conception of the sentence.

(Entire answer objected to, as evasive and not responsive to the question.)

Q. I want to know the month and year in which you took the *ex parte* affidavits of certain parties that you had obligated yourself to do under your contract of April 21st, 1874, with Porter?

45 A. I did not take any depositions under the contract of April 24, 1874. That is an executed contract, if I understand it. The testimony I have taken in Mexico, I don't remember the dates thereof, nor have I charged my memory therewith, but I do know that it was previous to the contract signed April 21, 1874.

Q. Were you, at any time during the year 1870, in the State of Texas or within the Republic of Mexico?

A. I was not in the Republic of Mexico during 1870, to my knowledge. I cannot recall now as to whether I was in the State of Texas in 1870, but I was there in 1871 in Austin and in San Antonio.

Q. Were you in either Texas or the Republic of Mexico, or both places, during the year 1871; and, if yea, what business were you engaged in in either or both places?

A. I was in the State of Texas in 1871, and was there ostensibly for the purpose of paying taxes to land and hunting up titles to land. As to whether I was in Mexico in that year I cannot now call to mind.

Q. Were you in either of the last above-named places in the year 1872; and, if so, for what purpose?

A. I was in the State of Texas in 1872. I travelled a good deal through the State, from East to Sou'west. I was written to by many acquaintances, planters in the State, for to take cases and prosecute

them in Washington before the Secretary of the Treasury, under sec. 5 of act approved May 18, 1872, generally known as the cotton act.

Q. Did you take any depositions in that year to be used in these cases?

A. No, sir; I did not. I knew nothing of the cases until I was approached on the subject by Dr. Porter and Charles H. Winder; I disremember the date; it was, I think, in 1873, some months before the date of this executed agreement.

Q. Did you go to either Texas or Mexico during the years 1873 and 1874 for the purpose of taking evidence to be used in these cases in which you claim an interest?

A. As I said before, I have been to Arkansas and to Texas in connection with other business in relation to these cases, but I have never been to Mexico to take depositions in any form in relation to these, nor have I ever said I did.

Q. After your verbal agreement, as you state, with Winder and Porter, that you could procure certain evidence to be used in these cases, did you leave this city for the purpose of going either to the State of Texas or the Republic of Mexico for the purpose of taking depositions to be used in these cases and in accordance with your parole understanding with Winder and Porter?

A. To the best of my recollection it was not a verbal understanding, but a matter written down. This was first put down as a memorandum and afterwards turned into this executed agreement. I did not go to Texas on this business alone, as I have before said, but I went first to Rocky Comfort, Arkansas, and then to San Antonio, Texas. I don't know the date, but it was antecedent to that agreement.

46 Q. Did you leave the city of Washington during the year 1874 for the express purpose of taking either depositions or *ex parte* affidavits to be used as testimony in these cases under any agreement, either verbal, oral, parole, or in writing, with Winder and Porter, or either of them?

A. As I have stated heretofore I have left the city of Washington between the dates in which Charles H. Winder and Dr. Porter solicited me to obtain such testimony and the date of the executed agreement which they entered into afterwards, upon the receipt of this testimony. I did not expressly leave Washington for the purpose of procuring the testimony alone, as I have said heretofore, but in connection with other business. Notwithstanding I did obtain the testimony, and turned it over to Charles H. Winder, who had it in his possession several months before he entered into the executed agreement which is now extant. I have not charged my memory with the year or the date of the month, except what the official papers show now.

Q. Where were you during the year 1874?

A. I presume I was the greater part of the time in the city of Washington.

Q. Where were you the other part of it?

A. I can't call to mind. I can't charge my memory with what I

did diurnally or annually, but have been working in professional matters as I am to-day.

Q. What is your best recollection about being out of the city in 1874?

A. Really I cannot charge my memory. I have not kept a diary.

Q. Had you been away from the District of Columbia for a couple of weeks in 1874, do you think you would have recellected it?

A. I don't wish to think anything about it. I don't recollect it now.

Q. Don't you know the fact to be that you were not either in Texas, Louisiana, Arkansas, or the Republic of Mexico during that year?

A. I have not stated that I was in Louisiana, or have I stated that I was in the Republic of Mexico, but I have sworn to the fact, which is a fact, that I was in Rocky Comfort, Arkansas, and in the city of San Antonio, Texas, during the interim between the dates of the parole agreement, let it be in writing, orally, or otherwise, that was entered into between Charles H. Winder and myself and the date of the executed contract now extant signed by these parties, and that in proof of the facts that I now have sworn to, I have brought John Quinn, an overseer from David Hunter's plantation at Rocky Comfort, Arkansas, into the city of Washington to give testimony in a cotton case, and the books of Bartley, Ray and Jenner, of this city, will show these facts in regard to my expenditures, &c., with this same business in connection with others, as my business in them days was extensive, which it is now extensive in the prosecution of legal business.

47 Q. If your recollection will enable you I wish you would tell me whether or not you were in Arkansas or San Antonio, Texas, or both places, during the year 1874?

A. I have answered the question before that I have not charged my memory with dates, but that I have been in those places between the dates of the parole and the executed agreements. That is all the answer I can make to that question, or to any other dilatory questions put to me.

Q. In what month and year did you have the parole agreement?

A. That I cannot state.

Examination adjourned to Saturday, the 17th day of January, 2 p. m.

JANUARY 17TH, 1880.

Not pursuant to adjournment.

Present: Counsel for Chiles and complainant, the other counsel having waived attendance and permitted the testimony to be taken subject to exception and objection by said absent counsel.

Cross-examined by Mr. PIKE for defendant Chiles:

Q. Have you present recollection of having on the 1st day of December, 1875, in the city of Washington, D. C, before S. M. Rittenhouse, a notary public in and for said District, testified, as for and on behalf of Doctor Richard H. Porter, your testimony to be read on

the trial of a certain cause pending in the circuit court of the county of St. Louis, Missouri, wherein Richard H. Porter was plaintiff and Sarah Mildred Standish and Richard H. Musser were defendants, in the words following, to wit:

"I think that in the fall of 1873 or early in the spring of 1874, Dr. Porter came to me in the city of Washington and enquired of me if I knew anything of the murdering of Generals Parsons, Standish, and Conrow; I told them yes, that I was in Mexico at the time these gentlemen were reported to have been murdered. He then asked me if I would not give my testimony as to what I knew of the facts. I told him yes. I would do anything in the matter for the benefit of the heirs of these murdered parties. I done so, under oath; the testimony was only from hearsay of these officers."

"After which Charles H. Winder, whom I presume was counsel in the case, came to me and asked me if I could not get direct testimony in the case. I told him yes, but it would be necessary to send to Mexico for such testimony, and that if the counsel in the case would bear the expense of sending for it, I would send to Mexico and get it. Dr. Porter and Mr. Winder then told me that if I would bear the expense of sending for it they would give an interest in the fees. I then hesitated for some time, but they came to me repeatedly, day after day, for a week, and I at last consented to bear the expenses. Then they gave me a memorandum of agreement allowing me one-fifth of the fees, provided that I got the direct testimony in the case. I then sent to Capt. Wm. Stone, of Eagle Pass, Texas, on the Rio Grande, and directed him to go to
48 Don Pedro Winkler, who commanded the Custom-House Guard of Mexico, on the Rio Grande, and to say to him that I requested him to get sundry of the soldiers who were in Col. Sanchez's command at the time the said parties were murdered by order of said Sanchez, as the heirs of said murdered parties were in indigent circumstances, and if they could do anything for the citizens of his country before this commission, that I would reciprocate his kindness. Upon which two of the soldiers that were in the command of Col. Sanchez, at the time referred to, were brought to Pidras Negras, and there testified in regard to the fact, which testimony was forwarded to me by Capt. Wm. Stone aforesaid. I then gave it to Dr. Porter and Mr. Winder. They then tore up the memorandum of agreement which they had given me in the early part of 1874, and then gave me an agreement which I now hold of one-fifth fee to cover the expense of procuring such testimony." And further in response to this interrogatory. "4th. Please state, as nearly as you can, the date of your first interview with Dr. Porter?" in these words: "Dates I cannot remember, but facts I can. But from the date of the agreement I now hold, which is in the early part of 1874, and knowing that it took several months to procure the testimony from Mexico, my impression is, that it was late in the fall of 1873, or the commencement of '74."

A. Then, as now, I had not charged my memory with the dates. All that I can say is that I performed the duty devolved upon me between the dates of the parole agreement and the executed agree-

ment which I now hold; I have made such testimony as referred to in the question. Winkler was a nickname of Don Pedro Valdez.

Q. According to the best of your present recollection and belief, were the dates given in your said testimony substantially correct?

A. I have not said then that they were. As I said before I have not charged my memory with them. In addition to this I would say that I have made inquiries from Rutledge Wilson, who, I presume, translated the testimony from Spanish into English, and he showed me his books where he made a charge for such services against Dr. Porter, and his bill is dated November 25, 1873.

Q. Have you present recollection of having further testified on the occasion referred to in my first cross-interrogatory in response to an interrogatory in these words, to wit: "State, if you know, what became of the first written agreement you have mentioned"—in these words, to wit: "Tore it up at the time the second agreement was made;" and further in response to an interrogatory in these words, to wit: "Please state its date, and by whom it was executed," in these words, to wit: "It was written by Chas. H. Winder, and signed by he and Dr. Porter." I can't remember the date, but it was either in the fall of 1873 or spring of 1874.

A. Yes, sir. I have recollection of making such testimony. I don't know that them is the exact words. I did not keep a copy of my answers.

49 Q. Was the testimony so given by you substantially correct according to the best of your present recollection and belief?

A. All of the main facts are correct; but I cannot, from any record that I have, know the dates on which I obtained the testimony or delivered it.

Q. In what manner and form was the testimony you allege that you procured in pursuance of your said agreement with Dr. Porter taken, and by you delivered to him?

A. It was taken in a court of record in Mexico and bore the seal of the court on the manuscript. Capt. Wm. Stone conducted the taking of the testimony, as I was informed, and deponents were personally known to him and Don Pedro Valdez, *alias* Winkler. I received the testimony in such form and turned it over to Charles H. Winder.

Q. Were not the names of the only witnesses whose testimony was procured and by you delivered to Mr. Winder under your said agreement with Dr. Porter as follows, to wit, Thomas P. McManus, yourself (whose *ex parte* affidavit was made in Washington city), and Florencio Cruz and Crecencio Reyes, whose testimony was taken in Mexico?

A. I have never had a separate agreement with Dr. Porter. I don't recollect the names of the deponents at all. I only know that they were soldiers in the command of Sanchez, and they were personally known to the officers that administered the oaths.

Q. Was the testimony you procured through Capt. Wm. Stone under your said agreement that which was translated by Mr. Rut-

ledge Willson, and for which he presented his bill for services as translator in November, 1873, as hereinbefore testified by you?

A. I have not testified that it was that testimony which was translated by Rutledge Willson. I turned the testimony over to Charles H. Winder—the original manuscript—and I was informed by him that Rutledge Willson had translated it.

Q. Had you ever at any time before Dr. Porter approached you and made request to you for the procuring of testimony, as you have heretofore testified, any connection whatever with the prosecution of the claims of the widows and orphans of Conrow, Standish, and Parsons before the hereinbefore-mentioned American and Mexican Commission?

A. None whatever.

Q. Had you at or before the time that you entered into your said agreement with Dr. Porter informed yourself of the status of said claims under the rules of said commission?

A. My first information was derived from Col. Gist. He informed me that he had wrote out the petitions as the attorney of John Chiles and Dr. Porter, and that on the return of the latter from St. Louis, in making a demand for money from he, Gist, and Chiles to
50 defray his expenses to and from St. Louis, and so forth, that he, Gist, withdrew from the prosecution. The balance of the information I got from the official papers and documents purporting to be agreements and powers of attorney in the possession of Winder and Porter. I afterwards ascertained at the rooms of the commission that Winder was the recognized attorney.

Q. What I particularly desire an answer to by my former interrogatory was this: Had you—had you at the time you entered into your agreement with Dr. Porter duly informed yourself whether or not any additional testimony would be received by the commission in said Parsons, Standish and Conrow's cases?

A. I did not at the time inform myself, because I believed this was the duty of the principal counsel, whom I found to be Charles H. Winder; but I do not know that Mr. Winder told me that the testimony would occasion a second brief, and that in this brief he would copy the testimony procured by me.

Q. Had Richard H. Musser, John Chiles, or the law firm of Messrs. Pike and Johnson, anything whatever to do with your said agreement with Dr. Porter and Winder?

A. I had no personal connection with Musser, Chiles, or the law firm mentioned; but I did look on Dr. Porter to be the legal substitute of R. H. Musser, of St. Louis, from the legal papers then in possession of said Porter, and I was informed of this fact by Charles H, Winder. They individually had nothing to do with me, to my knowledge.

(By counsel for Winder:)

Q. You have heretofore stated that you entered into a written agreement with R. H. Porter and Charles H. Winder on April 21, 1874. Will you state what connection Charles H. Winder had with the prosecution of the claim of the heirs of Parsons, Conrow, and

Standish for indemnity against the Mexican Government, and if any services were rendered by him, state as fully as you can what his services were.

A. I can answer only from reading Charles H. Winder's second printed brief to the commission, and believe that he made great search in regard to the production of British authorities to show the amount of indemnity demanded by that government from a foreign sovereign. He went into this search so minutely that he even showed the difference between the amounts demanded by the British Government for the maltreating or murdering of professional men by a foreign sovereign, and in this connection classified the professions of Parsons, Conrow, and Standish, one being a doctor, one a lawyer, and one a civil engineer; and as it afterwards appeared, the umpire, Sir Edward Thornton, just gave the amounts of awards that the said Winder had shown was obtained by the British Government in cases of the same analogy.

Examination adjourned to Wednesday, the 21st January, 1880, at 2 p. m.

JANUARY 21, 1880.

Further adjourned to Friday, at 2 p. m.

51 FRIDAY, 23*d January.*

Further adjourned to Monday, 26th January, 1880, at 3 p. m.

MONDAY, 26*th January*, 1880.

Met pursuant to adjournment. Present, counsel for Winder and Chiles; whereupon cross-examination of witness MCMANUS is continued as follows:

By Mr. INGLE, for Winder:

Q. State what, if anything further, you know in response to the question already propounded to you at my instance as counsel for Winder, but in my absence.

A. I found also that Mr. Winder was very diligent in obtaining information from the proper source to obtain testimony to establish the claims of petitioners, and in this connection came to me sundry times at the Columbia Hotel and revised the evidence that I gave myself gratis to the claimants. It was here that he consulted me, and that we came to the conclusion to draft a form of testimony to forward to Mexico, to be submitted to some of the officers and soldiers that was members of the command that murdered the claimants. I further believe from personal observation, and by what I heard by the clerk of the commission, Mr. Coyle, that Mr. Winder was the counsel recognized in the prosecution of the cases before the commission, and all papers on file at the time I made the examination would indicate the same—all papers and printed briefs at the time I made the examination would indicate the same.

(The examiner, at the request of Mr. Buchanan, counsel for Charles E. Rittenhouse, who is absent, propounds the following question:)

Q. State what communication, if any, you made to Mr. Stephen

V. White before he made his pretended purchase of an interest in these claims from Mr. Porter, as to Mr. Rittenhouse and others holding interests in the same.

A. I was informed by Dr. Van Camp, of Washington, D. C., that R. H. Porter had been to New York for the purpose of selling to S. V. White and obtaining money. I therefore, on the same day or the day following, or some time following, addressed a letter to S. V. White, at No. 8 Wall St., New York, and informed him that I owned an interest in the fees in said claims, I think I told him amounting to one-fifth of the whole fees, under an agreement in writing and signed by Charles H. Winder, of counsel, and R. H. Porter, attorney-in-fact, and that such agreement was on file in the Department of State, and I think I also informed him in said letter that Rittenhouse and Peugh also owned an interest, as I was informed, in said fees. In the month of July last, or the latter part of June, I was in the city of New York and stopped at the St. Clair House on Broadway. Mr. S. V. White visited my rooms at said house for the purpose of trying to purchase my interest in said fees. He would not buy my interest alone, but said he would purchase the interest of myself, Rittenhouse, and Peugh, and Charles H. Winder, if we were satisfied to take a stipulated sum. I was anxious to sell and willing to sell—told him I had no authority to negotiate for any of
52 the other parties, nor would I interfere. In conversation he talked rather hard of Dr. R. H. Porter in regard to the action of the latter, at least in respect of the sale of the fees to him (White) by Porter; I replied that he (White) could have availed himself of how the equities connected with the parties stood at the Department of State, as I represented by letter to him some time previously. He then and there answered me in the presence of Major Allen Thompson and said that he wished he had done it.

Q. If you saw Mr. White at any time afterwards and had any conversation with him about these claims and your previous information to him, please state where and when you saw him, and what the conversation was you had with him.

A. I think that my answer to the first question fully answers the second with the exception that I informed him (White) of the fact that I understood from Mr. Peugh that he (Peugh) had long before written to and filed caveats in the Department of State showing his interest in said fees.

Examination adjourned to Jan. 27, 1880, at 3 p. m.

JAN. 27, 1880.

Met pursuant to adjournment.

Present: ———, for complainant; defendants Winder, Porter, Chiles, and def't Musser in person, whereupon—

The witness THOMAS P. MCMANUS was examined by the counsel for complainant, as follows:

Redirect by Mr. T. J. MILLER:

Q. Did you receive any money or other payment from Col. Musser

or Dr. Porter or anybody else for your services in these causes against the Mexican Government; and if yea, how much and when?

A. I have never received any money from Col. Musser or Dr. Porter, or any other payments whatever in money or otherwise, and I don't recollect whether I had any promises from any of them except my contract.

Q. What notice, if any, did you give to Mr. Stephen V. White of your interest in these cases?

A. I think I answered that question fully on yesterday; however, I will say in addition to my answer of yesterday that at the time Mr. Evarts commenced to pay the claimants under the act of Congress, S. V. White came to the city of Washington expecting to receive the whole fees subject to my right under his original purchase from R. H. Porter, and, indeed, warrants was made out, as I understand, at the State Department in the name of S. V. White for this purpose. He then had an opportunity to examine and did examine the records in the State Department in regard to the rights of the litigants in interest. At this time it was found in the Department of State that Mr. Musser, of St. Louis, had no agreement on file in the Department of State to show his right to the fees or any part of them, as I understood it from the solicitor of said Department. However, many months after this Mr. White convinced him-

53 self in his own mind that Mr. Musser was entitled to all the fees or a part of them, and notwithstanding the agreements on file in the Department of State or other litigants to the fees, he, (White) as I understood it from other parties, bought out the interest of Col. Musser and Pike and Johnson for a large amount in cash.

Recross-examined by Mr. J. J. JOHNSON for def't Porter:

Q. Mr. McManus, in asking you the following question, I earnestly beg of you to confine yourself expressly to the question, and not fly off at tangents and non-essentials. The question is this: When and by whom were you appointed collector for the district of Texas?

A. I never was collector, nor was I ever appointed to the district of Texas. That is comprised in the district of Galveston, port of Galveston. I was collector of customs on the Rio Grande, and appointed as such in the fall of 1865. Immediately after my release by decree of Maximilian, I met General Sheridan at Fort Duncan, on the Rio Grande, to whom I had orders to report, from General Canby at said place. General Sheridan requested me to open custom houses on the Rio Grande and appoint mounted inspectors under military authority, thus to prevent merchandise from being brought into Texas until duties could be collected on it, and to continue on this duty until collectors of customs of the different districts, and especially that district, should arrive. I remained in this capacity until Mr. Taylor, collector of the district of Siluria, arrived in the fall of 1865. I was then and there appointed by Mr. Taylor, and the tariff was forwarded to me by Hugh McCulloch, Secretary of the Treasury, and I entered upon my duties as collector.

Q. What was your title and rank in the army when you received General Sheridan's order to act as above stated?

A. I held a commission from Sam. Houston, Governor of Texas, issued in 1861, and in my possession at the time as colonel, and under that commission I organized 1,900 men.

Q. Would the fact of your holding such a commission appear among the records of the War Department?

A. I don't think it would. My name, however, was sent in nomination to the President of the United States for a commission. I fought under the commission from the States, and was recognized by the military officers of the Department of the Gulf.

THOS. P. MACMANUS.

Sworn to and subscribed before me, this 27th day of January, 1880.

JNO. CRUIKSHANK,
Examiner of Chancery.

Examination adjourned to 3 p. m. on Wednesday, January 28, 1880.

J. C., *Exam'r.*

54

McMANUS *vs.* STANDISH *et al.* } Equity.

MAY 5, 1880.

Met pursuant to notice.

Present: Messrs. Miller and Lewis; Pike, for Chiles; Peugh, *pro se;* Ingle, for Winder; whereupon—

JOHN A. ROLLINS, of lawful age, a resident of Washington, D. D., a witness produced and sworn in behalf of McManus, deposes and says:

(Witness here shown paper.)

This is my signature attached to this paper. I was the attesting witness. I heard R. H. Porter say "that is my signature," and I saw C. H. Winder sign this paper, and I was requested by Mr. Winder to witness their signatures; and on that occasion I met Col. McManus for the first time and was introduced to him by Mr. Winder.

This paper was signed in a building on 4½ street, then occupied by the Southern Maryland Railroad Company. Mr. Lemon, this other witness, was employed, I believe, by that company. I think the name on that paper is his. I am not sure.

(The paper is offered in evidence, and marked J. A. R., No. 1.)

This agreement made this 21st day of April, in the year 1874, between Richard H. Porter and Charles H. Winder, of the first part, and Thomas P. MacManus, of San Antonio, Texas, of the second part: Whereas the said R. H. Porter is attorney-in-fact of Sarah Mildred Standish, Mary Conrow, and S. Kearney Parsons, the widows and son and heir-at-law, respectively, of Austin M. Standish, Aaron H. Conrow, and Munroe M. Parsons, who were murdered by the military authority of Mexico, near the river San Juan, in the State

of Nueva Leon, in Mexico; and whereas a proceeding is now pending before the American and Mexican Joint Commission for indemnity to said widows and son on account of the murders aforesaid; and whereas the said Thomas P. MacManus has procured from Mexico testimony establishing the facts set forth in the memorials of the said widows and son:

Now, therefore, for and in consideration of the premises, the parties *of the* hereto of the first part hereby agree and bind themselves that in the event of awards of indemnity being decreed by said joint commission to pay over to the said Thomas P. MacManus one-fifth of the whole fee agreed to be paid by the said petitioners for recovery of their respective claims.

R. H. PORTER,
Attorney-in-Fact.
CH. H. WINDER,
Of Counsel.

Witnesses:
W. S. LEMON.
JOHN A. RAWLINGS.

JOHN A. ROLLINGS.

Sworn to and subscribed before me, this 5th day of May, 1880.
JNO. CRUIKSHANK,
Examiner in Chancery.

55 EXHIBIT PL'FF, No. 2.

UNITED STATES OF AMERICA, *Department of State:*

To all to whom these presents shall come, Greeting:

I certify that the documents hereto annexed are true copies from the files of this Department.

In testimony whereof, I, William Hunter, Acting Secretary of State of the United States, have hereunto subscribed my name and caused the seal of the Department of State to be affixed. Done at the city of Washington, this 17th day of July, A. D. 1879, and of the Independence of the United States of America the one hundred and fourth.

[SEAL.] W. HUNTER.

Copy.

DR. R. H. PORTER.

No. 242 BROADWAY, LOUISVILLE, KY., *Apr.* 7, 1878.

Major A. McKEE.

DEAR MC.: Your letter came in due time, but I have had so much to do, and so much annoyed, that I have — written except where I am compelled to do so. I expected to have returned before now, but some things I have [to] attend to can't be hurried. Therefore I will not leave here until the last of the week. I have commenced suit against 1st National Bank of this place for the $500 I drew against when in

Washington. I find they owe me $500, beyond all question. I can show that in the month June they had $2,000 of my money; they have credited me with $1,500. I raised a draft for $500. The indorsement should — passed through their house in June; they can't explain anything about it. They can give no explanation of it whatever; at l-ast, say they suppose they advanced the money and made no entry. I called for my account before showing this draft. They made it out the dr. and cred. even, both $1,500. I sent a lawyer to know if that was all of my account; they said yes. He then showed them this draft. They became excited and looked around and into books, &c., but couldn't explain, and then got mad. My lawyer told them that their explanation was not satisfactory, and it certainly was not to me. I had them sued right off. They owe me $500 certain. Every one who has seen the papers say they certainly do owe me. Mark you, I had an account with them in the month of June until Sept. In that time I deposited a draft drawn by my son dated June 23d, for $500, one on the 26th for $1,000, then the certificate which was drawn June 19th, for $500. They have only credited me with $500, when it ought to be $2,000, so you see there can be no doubt about their owing me the $500. But as they said they did not and protested my draft drawn. They don't like to acknowledge mistake. The truth is I don't think it is a mistake; if it is, it is done on purpose. $500 is too large amount for a bank
56 not to know all about it. My good friends at Washington who claim such large interest in the Mexican claims will be surprised with the willingness I will settle with them. MacManus and Peugh shall have every dollar coming to them, even the lb. of flesh. Their contract shall be carried out to the word and letter. I will see that is done to a certainty. Rittenhouse has written me a most remarkable letter. He acknowledges he sold to me all his interests in the Mexican claims, and also Mr. Hamilton M. Thrasher, but he thinks I ought to give it back to him, that I bothered him so or he would not have done it. He throws himself upon my generosity. He is crazy or a knave, I don't know which, both perhaps, as a majority of certain liars and slanderers are about Washington who have lived and are living by pretending to be doing or able to do certain things they can't do, and they know it. But if they ever get a hold on to you they stick like leeches; you can't shake them. I have made this longer than I expected; not to have any news. I was in hopes I would get my $500, but I fear I won't. I am well acquainted with the bank attorney; he says he will look at their books. If he finds they owe me he will advise them to pay me. If I had money I would not want them to pay me. I would rather go on with the suit. It will vindicate me in a public way and to the mortification of the bank in Washington. They have taken great pains in circulating that I had no money in this bank. I will come to Washington some time after Wednesday this week.

Your friend, R. H. PORTER.

Telegram.

Copy.—13—o—250 R.

SEP. VTH.

R. M. THOMPSON,
Thirteen forty-one F street N. W., Washington, D. C.:

Coming to-night specifically for discontinuance, collection, and division as proposed.

S. V. WHITE.

Telegram.

Copy.

NEW YORK, *Sept. Vth.*

R. M. THOMPSON,
Thirteen forty-one F street N. W., Washington, D. C.:

Believe McManus entitled to fees. Telegraph after inquiry at State Department if we can get money to-morrow. I come over, and the bill is dismissed.

S. V. WHITE.

C. E. RITTENHOUSE,
No. 1420 F street, Washington, D. C.

1420 F ST. N. W., WASHINGTON, D. C., *March* 15, 1879.

THOS. P. MACMANUS, Esq.:

Present. DR. SIR: In your letter of this date you make certain inquiries of me as follows: You say that I being a party interested with Mr. Peugh in the fees allowed by the claimants in the
57 claims known as the Conrow, Parsons, and Standish claims or the awards made thereon agt. Mexico, and that we being familiar with the services rendered by you in sustaining said claims and securing the awards, you request answers to the following questions, viz: 1st. You ask what was the opinion of R. H. Porter and Chs. H. Winder as to the success of the said claims, prior to the submission of the testimony procured by you in Mexico? I answer it was understood by all parties concerned, Porter, Peugh, Winder, and myself, that the claims were very doubtful, and confidence was felt of any favorable result until after the agt. and counsel of the claimants submitted the testimony procured by you. After this all felt hopeful and no dispute to my knowledge was ever made as to the several interests in the fees until after the awards were made. Second. You again ask whether the co-att'y of the claimants, R. H. Musser, at St. Louis, Mo., corresponded with me on the subject of these claims subsequent to my advancing money to Porter for the interest in the fees which he sold me, which money he obtained as he, Porter, stated for the purpose of procuring necessary evidence, also additional advances for translations, printing, and other legal expenses in the prosecution of the claims, and if said Musser did not acknowledge and fully indorse Porter's contract and agreement with me; if so, what become of such correspondence? I answer this question as follows: Mr. Musser fully indorsed Porter's

agreement with me in the correspondence referred to, and has never disputed Porter's action in the premises. But the letters are not now at my command, as I loaned them to Mr. Peugh a few months ago under a positive promise from him to return them to me in a few days. Instead of doing so he, as I am told, and which he acknowledges, gave them to Porter to be used as evidence in court at St. Louis, and either Porter or Musser has taken them from the records, as stated by my St. Louis correspondent on his postal card herewith submitted.

Third. You ask (Mr. Peugh and myself being interested in the fees) whether we would raise any objections to the payment to you of the amount guaranteed to be paid you by special agreement. I, for myself, can say that your interests in the fees thus guaranteed by said agreement has nothing whatever to do with our interest or the interests of any other party, and I think that you are clearly entitled to immediate payment. I therefore cannot see on what grounds any just or reasonable objections can be made to your being promptly paid.

Yours, &c.,

C. E. RITTENHOUSE.

MARCH 17, 1879—3 o'clock p. m.

DEAR SIR: Since writing the foregoing I have seen Mr. Peugh, and after some conversation about the M. awards, I asked him if he had any objections to your being paid the amount due you as per agreement, and he promptly and decidedly said: "Not the slightest. I do not wish to interfere with his or any other man's rights, &c."

Truly,

C. E. RITTENHOUSE.

T. P. MCMANUS, Esq.

58 *Order Consolidating Cause with MacManus vs. Porter et al., No. 6382.*

In the Supreme Court of the District of Columbia.

THOMAS P. MACMANUS *vs.* R. H. PORTER *et al.* } No. 6382.

CHARLES H. WINDER *vs.* RICHARD H. PORTER *et al.* } No. 7011. Equity.

The cause of Charles H. Winder *v.* Richard H. Porter *et al.* coming on to be heard at this term of the court, upon the motion of the defendant therein, Thomas P. MacManus, to consolidate the cause with cause of Thomas P. MacManus *v.* Richard H. Porter *et al.*, No. —, equity, was submitted to the court; whereupon, and upon consideration thereof, it is, this 22nd day of December, A. D. 1879, ordered and decreed that the two causes above named be, and the same hereby are, consolidated, and that the proceedings in the one

case shall be taken and deemed as having been done in both, and that all future motions, orders, or other proceedings made in either case shall be taken and deemed as made in the cases consolidated.

By the court: MACARTHUR, *Justice.*

In the Supreme Court of the District of Columbia, the 13th day of October, 1879. Equity.

CHARLES H. WINDER, Plaintiff,
vs.
SARAH MILDRED STANDISH, MARY ANN CONROW, STEPHEN Kearney Parsons, Richard H. Porter, Charles E. Rittenhouse, Samuel A. Peugh, Thomas P. MacManus, John Chiles, Stephen V. White, and Horace B. Claflin, Edward E. Eames, Horace J. Fairchild, William S. Dunn, Dexter N. Force, Daniel Robinson, and John Claflin, partners under the firm name and style of H. B. Claflin & Co., Defendants. } No. 7011.

The plaintiff complains and says:

1. He is a citizen of Maryland, and resides in Baltimore, in that State.

2. The defendants, Sarah Mildred Standish, Mary Ann Conrow, and Stephen K. Parsons, reside in Missouri. The defendants, Richard H. Porter, Charles E. Rittenhouse, S. A. Peugh, Thomas P. MacManus, and John Chiles, reside in the city of Washington, in the District of Columbia. All the other defendants reside in the city and State of New York.

3. On or about the twenty-eighth day of December, 1869, the said defendants, Standish, Conrow, and Parsons, having claims against the Republic of Mexico, made and entered into several contracts with one Richard H. Musser, and thereby severally agreed to employ said Musser to prosecute their said several claims before the Joint Commission constituted under the convention entered into between the United States of America and the said Republic
59 of Mexico on the 4th day of July, 1868, and to allow and pay to him, the said Musser, in consideration of his services in that behalf, one-half of whatever sums of money should be ultimately awarded to them, respectively, by reason of their said several claims, and also executed, and to the said Musser delivered, their respective letters of attorney, whereby they authorized and empowered the said Musser to prepare, present, and prosecute the said claims, and in their respective names to procure advances of money, and to retain and employ skillful counsel, as might be requisite in the premises. Said letters of attorney also contained powers of substitution. Said contracts and letters of attorney are on file in the Department of State of the United States. Plaintiff hereby refers to them as parts of this bill, and prays that they may be read at the hearing.

4. Shortly after the middle of the year 1870 the defendant, Richard H. Porter, was the duly authorized agent and attorney-in-fact of the said claimants, Standish, Conrow, and Parsons, substituted as

such by said Musser under the aforesaid letters of attorney. Said Porter, as such attorney, had resorted to and employed said defendants, Rittenhouse and Peugh, to make advances of money and to procure the advise and services of legal counsel requisite for the preparation, presentation, and prosecution of said claims. At the time last mentioned said Peugh and said Rittenhouse applied to me, the plaintiff, for the purpose of engaging my services as attorney and counsellor at law for the single purpose of furnishing, for a certain fixed compensation, a brief in behalf of said claimants, and I undertook that professional engagement. At that time, as well as for many years before and afterwards, I resided and practiced law at the city of Washington, where said commission sat. It very soon became manifest that the labor, skill, and care that said claims demanded would be far in excess of what was contemplated and bargained for in my agreement with Rittenhouse and Peugh. At their instance and request, in behalf of said Porter, I continued to control and manage said claims and the prosecution of the same, with the understanding and assurance that said Porter would, upon coming to Washington, make a satisfactory arrangement with me for my compensation in the premises. Accordingly, in the month of February, 1872, said Porter, in his own right and also as agent and attorney as aforesaid, did enter into a parol agreement with me, whereby he ratified and confirmed what had so as aforesaid been done by said Rittenhouse and said Peugh; accepted and adopted the professional services before that time rendered and performed by me; undertook and agreed that I should continue to prosecute, control, and manage said claims until the final determination thereof, and that, in consideration of such past and future services, I should receive four per centum of the aggregate amount which should thereafter be awarded on said claims, I to have a lien for the same upon the said amount of said awards, and also primarily upon the interest of him, the said Porter, therein, which said interest was fifty per centum of the whole amount of said awards, and had been assigned to him by said Musser at the same time when he, the said Musser, substituted him, the said Porter, in his place and stead as attorney-in-fact as aforesaid. Afterwards, on the
60 twenty-first day of April, 1874, this said parol agreement between said Porter and me was reduced to writing, signed and sealed by said Porter; and I file herewith as part of this bill a copy of said agreement and writing marked "Exhibit C. H. W., No. 1." Said Standish and said Parsons had in the meantime revoked said letters of attorney procured by said Musser as aforesaid, and had severally constituted the same Richard H. Porter to be their sole agent and attorney in the premises, and had also entered into written contracts with him, the said Perter, whereby they respectively stipulated and agreed to pay and allow to him, the said Porter, and to permit him and his legal representatives and assigns to receive and retain, for and in consideration of his services in the premises, one-half of whatever sums of money should be ultimately awarded to them respectively by reason of said claims. These last-mentioned letters of attorney, as well as those first herein mentioned with the

aforesaid substitution, were meant and intended by the respective parties thereto to be securities for said Porter's interest in said awards. Said Porter has always recognized and still does recognize the validity and obligations of his said agreement with me. The aforesaid letters of attorney, instrument of substitution and contracts for compensation and fees are on file in the said Department of State. I refer to them as parts of this bill, and pray that they may be read at the hearing. I faithfully and diligently rendered all the services on my part to be rendered under my said agreement with said Porter. These services extended over the entire period, beginning in the later part of the year 1870 and ending in the month of September, 1875, when the last of said awards was made by the umpire to whom said cases were referred by said commission. They consisted in preparing and submitting memorials, briefs, and arguments, adducing evidence, giving professional advice from time to time whenever requested, and attending in person the sessions of said commission. Copies of papers prepared and signed by me I duly forwarded to the said claimants, and they were received by them. So successfully and so effectually were said claims prepared, presented, and prosecuted by me, both before said commission and before the umpire, to whom they were finally referred, that on the twelfth and thirteenth days of March and the nineteenth day of September, 1875, respectively, awards were made by said umpire in favor of said Standish for the sum of $42,286.30, said Conrow for the sum of $50,497.26, and said Parsons for the sum of $50,828.76, amounting in the aggregate to the sum of $143,812.32 in Mexican gold dollars. I have never received payment or satisfaction of any part of the compensation named in my said agreement with said Porter, or any further or other security for the same, nor have I made any transfer or assignment of the same in whole or in part, and I am justly and equitably entitled to receive out of the fund which, by reason of said awards, is now in the hands of the Secretary of State of the United States, or is hereafter to come to his hands, as hereinafter shown, and out of said Porter's interest therein and distributive share thereof four per centum of the said aggregate amount; that is to say, the sum of $5,752.49 in gold, with interest. All the said claim-
61 ants, Standish Conrow, and Parsons, in their correspondence with said Porter in relation to the conflict of rights between him and said Musser have recognized the validity of my claim to its full extent and declared that I ought to be paid in any event.

5. At the time when the said defendant, Richard H. Porter, employed the said defendants, Charles H. Rittenhouse and Samuel A. Peugh, as hereinbefore mentioned; said Porter entered into an agreement, in writing, with said Rittenhouse and Peugh, dated the sixteenth day of February, 1870, whereby, in consideration of the advance of money by said Rittenhouse and Peugh, and other services to be rendered by them in the prosecution of said claims as aforesaid, he, the said Porter, assigned to said Rittenhouse and Peugh one-half of the amount which he, the said Porter, was or would be entitled to receive for his compensation as agent and attorney-in-fact as aforesaid, said amount being one-half of whatever

might thereafter be awarded on said claims. The amount of money which was, in fact, so advanced by said Rittenhouse and Peugh to said Porter, in pursuance of said agreement, was $300, and no more. I am informed and believe, and therefore aver and charge, that some time in the latter part of the year 1872 (as I learned long after said awards were made) said Porter refunded to the defendants Rittenhouse and Peugh the money which had been so advanced by them to him, and the said agreement was thereupon rescinded and delivered up to said Porter and canceled; consequently, the said Rittenhouse and Peugh have not, nor has either of them, any claim to any portion of the fund now in the hands of the said Secretary of State, or hereafter to come to his hands, applicable to the payment of said awards; nor does the said Rittenhouse pretend that they have, or that either of them has, any such claim. Nevertheless, the said defendant, Samuel A. Peugh, has filed in said Department of State a paper writing purporting to be a copy of said canceled agreement, and is now making claim for the whole amount mentioned in said agreement, and, in fraud of my rights, is seeking to get possession of the same and appropriate it to his own use, to my great and irreparable loss and injury.

6. The defendant, Thomas P. MacManus, is in like manner and in fraud of my rights claiming and demanding one-fifth of the whole fee agreed to be paid by said claimants Standish, Conrow, and Parsons; that is to say, one-tenth of the whole amount of said awards, under an agreement entered into with him by said Porter on the twenty-first day of April, 1874. To that agreement the parties thereto sought and obtained my signature merely as attorney of record for said claimants. Said MacManus represented that he had procured, or would procure, from Mexico certain evidence establishing the facts set forth in the several memorials of said claimants; that such evidence was material and of great importance, and that he, said MacManus, had incurred and would incur great personal risk and pecuniary expense in procuring the same; a solitary journey by him into the wilds of Mexico being the picture conjured up by him before the horror-stricken imaginations of his hearers. Said agreement with said Porter was entered into upon the faith of said representations; and the various services to be rendered by
62 said MacManus in procuring and furnishing said evidence constituted the consideration for the same. The only evidence which was in fact so furnished by said MacManus consisted of his own *ex parte* affidavit, made at the city of Washington, D. C., and the *ex parte* affidavit of two Mexicans, made at Piedras Negras, on the Rio Grande, opposite Eagle Pass, Texas. When the latter came to be translated, it was found that they were merely cumulative in relation to other evidence already adduced, and that they were of no use or importance whatever. The expense of procuring them could not have been more than a few dollars. MacManus himself never went to Mexico or elsewhere to procure them. Moreover, none of said affidavits were delivered by said MacManus until after the time limited by said commission for the reception of evidence, and, consequently, they were rejected as inadmissible. The

consideration for said agreement therefore entirely failed. Furthermore, said agreement was not in any sense an assignment; and I am advised that said MacManus has not any lien upon a claim to any portion of the fund now in the hands of said Secretary of State, or hereafter to come into his hands, applicable to the payment of said awards. Said MacManus has instituted proceedings in chancery in this honorable court for the purpose of enforcing his pretended rights under his said agreement with said Porter, and said proceedings are now pending and undetermined.

7. On or about the twentieth day of September, 1876, said Porter, in fraud of my rights, undertook and attempted to sell and assign to defendant, Stephen V. White, for the pretended consideration of $15,000, the whole of the one-half of said claim of said Parsons, to which he, the said Porter, was entitled under the letters of attorney aforesaid, and on or about the fourteenth day of June, 1877, he, the said Porter, further undertook and attempted, in fraud of my rights, to sell and assign to the same Stephen V. White, for the pretended consideration of $12,500, the whole of the one-half of said claim of said Standish, to which he, the said Porter, was entitled under said letters of attorney. I do not admit that the said pretended considerations, or any part thereof, or any other consideration for said pretended sales and assignments ever passed from said White to said Porter. On the contrary, upon information and belief, I deny the same, and require a discovery and strict proof thereof.

8. On or about the — day of ——, as I am informed and believe, the said Porter further undertook and attempted, in fraud of my rights, to assign and pledge to the same Stephen V. White, as security for the repayment of a pretended loan of money from said White to said Porter, the interest of him, the said Porter, in the claim of said Conrow; but I do not admit that any such advance of money was ever made by said White to said Porter. On the contrary, upon information and belief, I deny the same, and require a discovery and strict proof thereof.

9. The said defendant, Stephen V. White, at the several times of his said several transactions with said defendant Porter, and long before, had actual notice and full knowledge of the services I had rendered in the premises, of my said agreement with said Porter, and of the nature and extent of my claim by reason thereof.

63 10. I am informed and believe, and therefore aver and charge, that the said defendant, Richard H. Porter, is insolvent.

11. I am informed and believe, and therefore aver and charge, that on or about the nineteenth day of March, 1872, after the date of said Porter's said parole agreement with me, and years after said Musser had substituted said Porter as attorney for said Standish, Parsons, and Conrow, claimants, they, the said claimants, well knowing the rights which might have accrued, and which to me had in fact accrued, by reason of their aforesaid letters of attorney and contracts for fees and compensation, and in fraud of my said rights, employed Albert Pike, Robert W. Johnson, and Luther H. Pike (partners under the name and style of Pike & Johnson) to prosecute the

said claims; it being agreed between and among said claimants and said Musser and said Pike & Johnson that the fee of fifty per centum of what might be awarded—which fee was at that time still claimed by said Musser, notwithstanding his said substitution of and assignment to said Porter—should be divided between said Musser and said Pike & Johnson. In the month of January, 1879, said White, with actual notice and full knowledge of my rights in the premises, procured from said Musser and said Pike & Johnson assignments of their respective interests under this arrangement. At the time when my said agreement with Porter was reduced to writing I had no knowledge or notice of said arrangement.

12. Said defendant White afterwards assigned and transferred, or pretended to assign and transfer, to the defendants, H. B. Claflin & Co., all his right, title, and interest in and to the fund now in the hands of the said Secretary of State, or hereafter to come to his hands, as aforesaid. But I am informed and believe, and therefore aver and charge, that this last-mentioned assignment was without valuable consideration, and was merely an after-piece to said White's dealings with Porter and with Musser and Pike and Johnston, which in turn were only on the part of White, in more senses than one, an unlawful speculation.

13. All the instruments of said several assignments from Porter to White, from Musser and Pike and Johnston to White, and from White to H. B. Claflin & Co. have been filed by said White and still remain on file in the said Department of State. The said White and the said H. B. Claflin & Co., under color of the said pretended assignments, are now seeking to obtain possession of the fund now in the hands of the Secretary of State, as hereinbefore mentioned, and are claiming and insisting that he, the said White, and they, the said H. B. Claflin & Co., will be entitled to receive to his and their own use one-half part of each of the annual instalments that are hereafter to come to the hands of said Secretary, applicable as aforesaid, and unless restrained by the injunction of this honorable court he and they will succeed in receiving and appropriating to his and their own use the whole of the amounts thus wrongfully and fraudulently claimed by them, and I shall be entirely deprived of the benefit of my said agreement with said Porter.

64 14. I am advised that, inasmuch as the said defendants, Sarah M. Standish, Mary A. Conrow, and Stephen K. Parsons, did, by their said arrangement with said Musser and said Pike and Johnston, in violation of their contracts with said Porter, and in disregard of the rights that had accrued to me in consequence thereof, place it in the power of their assignee, White, and his assigns, to cheat and defraud me, the share and interest of them, the said Standish, Conrow, and Parsons, of and in the said fund now in the hands of the Secretary of State or hereafter to come to his hands ought, in equity, in the event of the said White or his assigns succeeding in obtaining possession of any portion of the said fund which may be justly payable to me, to be subjected to the satisfaction to me of my said agreement with said Porter, their authorized attorney in fact.

15. The said defendant, Richard H. Porter, who is insolvent as aforesaid, is now claiming the entire fee of fifty per centum agreed to be paid by the said Mary A. Conrow, and notwithstanding his said agreement with me, in seeking payment of the same to himself, for his own use, out of the fund now in the hands of the Secretary of State or hereafter to come to his hands as aforesaid, and unless prevented and restrained by the injunction of this honorable court will succeed in receiving such payment, and applying it to his own use, to my great and irreparable loss and injury.

16. To the bill and amended bill of said MacManus, in the proceedings mentioned in the sixth paragraph of this bill, the said Standish, Conrow, Parsons, Musser, Porter, Pike & Johnson, Peugh, Rittenhouse, White, myself, and others, are parties defendant. The object of the suit was, and is, to obtain a statement of an account between and among the parties, to adjust their respective priorities, and to enforce any liens on said funds that might or may be ascertained to exist. By an order passed in said suit, the said defendants thereto were enjoined and restrained from claiming the said fund, or any part thereof, or seeking to obtain possession of the same. Said order is still in full force and effect. Of the pendency of said suit, and the existence of said order, said H. B. Claflin & Co. had notice at the several times of the execution of the said several pretended assignments from said White to them.

17. The aforesaid assignments from said Musser and from said Pike & Johnson were procured by said White long after the filing of the original bill in said suit of Thomas P. MacManus and the service of process therein on him, the said White, or other sufficient notice to him of the contents of said original bill, and of the proceedings thereon.

18. Ever since the pretended assignments from said Porter and from said Musser and Pike & Johnson to said White, they, the said Porter & White, have been combining and confederating together to cheat and defraud me, and to obtain and apply to their own use, or to the use of the said H. B. Claflin & Co., the whole share of said funds originally belonging to said Richard H. Porter, or otherwise under his control.

65 19. The defendant, John Chiles, is a person who, in view of the contestation now going on over the said fund, has recently come forward, claiming and pretending that it is he who, like myself, is the victim of Porter's misconduct, and is entitled to the consideration and aid of this court. He has filed his bill of complaint in this court, wherein he sets up and alleges in substance that it was in consequence of information furnished by him to said Porter in the year 1869, ten years ago; that said Porter, and, through him, said Musser, procured from said Standish, Conrow, and Parsons, claimants, the aforesaid letters of attorney and contracts for fees, and that by a parole agreement or understanding between him, the said Chiles, and said Porter, he, the said Chiles, was to receive one-fourth of the compensation that was to be paid by said claimants, and he prays that the same may be decreed to be paid him. I have fully answered said bill, and I do not admit that there ever

was any such agreement or understanding. On the contrary, upon information and belief, I deny the same, and require strict proof thereof. I am advised that such alleged information so furnished, if any, was purely gratuitous, and drew after it no obligation whatever, either legal or equitable. I have reason to believe that said bill is an afterthought, and a mere attempt to speculate upon the chances of litigation. At no time during my dealings with said Rittenhouse, Peugh, and Porter, as aforesaid, or at any other time, did I have even a suspicion of the existence of any such pretensions on the part of said Chiles, or any notice or knowledge of any of the conversations, agreements, understandings, and arrangements between said Chiles and said Porter, and between said Porter and said Musser, alleged in said bill of complaint of said Chiles.

20. Under the provision of the aforesaid convention between the United States of America and the Republic of Mexico, the Republic of Mexico was and is to pay to the said United States of America the amount of said awards in certain annual instalments; and by an act of Congress approved June 18, 1878, the said Secretary of State is authorized and required to receive the said instalments and to distribute the same among the persons in whose favor said awards have been made, or to their legal representatives or assigns.

Within the period of three years now last past three of these instalments have been so paid by the said Republic of Mexico, and so received by the said Secretary of State, and my right to receive payment of my share of the same, under my said agreement with said Porter, has accrued. The said Secretary of State has paid over to the said claimants, and the said claimants have respectively received and receipted to him for one-half of the sums respectively due them on the first two instalments so paid over by the Republic of Mexico, and the said claimants have left the other moieties of said two instalments in the hands of said Secretary of State, to be by him paid over to all those who shall establish their right thereto. But the said Secretary of State has not made payment of any portion of the third of said instalments to either of said claimants, or to any other person whomsoever. The said Secretary of State has not made payment of any portion of the moieties of said three instalments in his hands to any person or persons, as
66 attorney or attorneys of said claimants, or as employés or assignees of said claimants or of such attorneys, owing to the irreconcilable conflict that has been brought before him by those claiming title thereto as aforesaid.

21. My claim and the claims of the above-named defendants, Porter, Rittenhouse, Peugh, MacManus, White, H. B. Claflin & Co., and Chiles, aggregate a greater percentage than the fifty per centum each, which said claimants, Parsons, Conrow, and Standish, agreed to pay for the prosecution of their respective claims, and it must be manifest to the court that all cannot be allowed for the amount claimed by each.

The plaintiff therefore prays:

1. That his lien upon the whole of the fund mentioned in this

bill of complaint may be established by the decree of this honorable court.

2. That the said defendant, Stephen V. White, may particularly set forth and discover the true consideration, if any, of the said several and respective assignments claimed to have been made to him as aforesaid.

3. That the said defendants, H. B. Claflin & Co., may particularly set forth and discover the true consideration, if any, of the said assignment claimed to have been made to them by the said Stephen V. White, and the nature and extent of the interest of them, the said H. B. Claflin & Co., in said fund, by reason of said assignment.

4. That a receiver may be appointed to apply for and receive possession of the said fund, and to release and discharge the custodian thereof from any and all claim, by or in behalf of any party to this suit, and that the said fund may be paid into the registry of this court.

5. That the said defendants, and every of them, their agents, servants, and attorneys may be restrained by order and injunction of this court from claiming the said fund, or any part thereof, and from seeking to obtain possession of the same.

6. That for the purposes aforesaid all necessary accounts may be taken, inquiries made, and directions given.

7. That the plaintiff may have such further or other relief as the nature of his case may require.

To which end the plaintiff prays for process against the defendants, Sarah Mildred Standish, Mary Ann Conrow, Stephen Kearney Parsons, Richard H. Porter, Charles E. Rittenhouse, Samuel A. Peugh, Thomas P. MacManus, John Chiles, Stephen V. White, Horace B. Claflin, Edward C. Eames, Horace J. Fairchild, William S. Dunn, Dexter N. Force, Daniel Robinson, and John Claflin, requiring them to appear and answer the exigency of the bill.

CH. H. WINDER.

C. INGLE,
L. G. HINE,
Counsel for Plaintiffs.

I do solemnly swear that I have read the foregoing bill by me subscribed, and know the contents thereof, and that the facts therein stated upon my personal knowledge are true, and that the facts therein stated upon information and belief I believe to be true.

CH. H. WINDER.

Subscribed and sworn to before me, this 27th day of September, 1879.

A. C. RICHARDS, *J. P.*

67 PLAINTIFF'S EXHIBIT C. H. W., No. 1.

(Copy.)

I hereby agree and bind myself to pay to Charles H. Winder, for services already rendered, and hereafter to be rendered, in the cases

of Sarah Mildred Standish, Mary Conrow, S. Kearney Parsons, now pending before the Joint American and Mexican Commission, now in session in the city of Washington, D. C., four per centum on the aggregate amount which shall be awarded in said cases.

Witness my hand and seal, this 21st day of April, 1874. Done in the city of Washington, D. C.

R. H. PORTER, [SEAL.]
Attorney-in-Fact.

Witness:
THOS. P. MACMANUS.
W. S. LEMMONS.

Restraining Order.

Hearing on the prayer of said bill for injunction is fixed for the 22d October, 1879. Until then you are restrained as prayed.

By order of the court:

A. WYLIE, *Justice, &c.*

O. B. 7, p. 144.

Subpœna.

In the Supreme Court of the District of Columbia, October 13th, 1879.

CHARLES H. WINDER, Complainant, *against* SARAH M. STANDISH *et al.*, Defendants. } No. 7011. Equity Docket 20.

The President of the United States to Sarah Mildred Standish, Mary Ann Conrow, Stephen K. Parsons, Richard H. Porter, Charles E. Rittenhouse, Samuel A. Peugh, Thomas P. McManus, John Chiles, Stephen V. White, Horace B. and John Claflin, Edwin E. Eames, Horace J. Fairchild, William S. Dunn, Dexter N. Force, and Daniel Robinson, firm of H. B. Claflin & Co., defendants:

You are hereby commanded to appear in this court at its first special term occurring twenty days after service of this subpœna, and answer the exigency of the original bill, this day filed, and entitled as above, under pain of attachment, and such other process of contempt as the court shall award.

Witness D. K. Carter, chief justice.

[SEAL.] R. J. MEIGS, *Clerk, &c.*,
By M. A. CLANCY,
Ass't Clerk.

Memorandum.—That the defendants herewith served *is* to enter their appearance in this suit in the clerk's office on or before the day at which this writ is returnable, otherwise the bill may be taken for confessed.

Return of Marshal.

Sum'd and served notice of injunction on Charles E. Rittenhouse, Samuel E. Peugh, Thomas P. McManus, Oct. 14th, 1879, and on John Chiles Oct. 19th, 1879. Not to be found, the others.

Oct. 23, 1879. F. DOUGLAS, *Marshal.*

68 In the Supreme Court of the District of Columbia, the 23d day of October, 1879.

CHARLES H. WINDER
vs.
SARAH M. STANDISH *et al.* } No. 7011. Eq.

On motion of the plaintiff, by Mr. Ingle & Hine, his solicitor, it is ordered that the defendants, Sarah M. Standish, Mary A. Conrow, S. K. Parsons, R. H. Porter, S. V. White, H. B. Claflin, Jno. Claflin, Edw. E. Eames, H. J. Fairchild, Wm. S. Dunn, D. N. Force, and Daniel Robinson, cause their appearance to be entered herein on or before the first rule day occurring forty days after this day, otherwise the cause will be proceeded with as in case of default.

By the court: MACARTHUR, *Justice, &c.*

Separate Answer of Defendant, Samuel A. Peugh.

In the Supreme Court of the District of Columbia, the — day of December, 1879.

CHARLES H. WINDER, Plaintiff,
vs.
SARAH MILDRED STANDISH *et al.*, Defendants. } No. 7011. In Equity.

1st. This defendant, Samuel A. Peugh, reserving to himself all right of exception to the said bill of complaint, for answer thereto, says:

That it is not true as averred in the 5th paragraph of complainant's bill that said Porter ever refunded to this defendant the amount of moneys advanced by him or any part thereof, nor is it true that said agreement was ever rescinded or delivered up to said Porter or cancelled, but, on the contrary, defendant avers that he is now entitled, under and by virtue of the said agreement, which is in full force and effect as to this defendant, to be paid out of the said awards the full sum of (12½ per cent.) twelve and one-half per cent. of the same, as his individual interest; the said Rittenhouse having been originally entitled to the same amount.

2nd. And this defendant further answering, says:

That his said claim in the premises has been more fully set out in his amended cross-bill, heretofore filed in this court, in the case now pending, wherein Thomas P. MacManus is complainant and Mildred Standish *et al.* are defendants, and numbered 6382—reference to which is here made as a part of this answer.

3rd. Answering all and singular the other paragraphs of said bill of complaint, defendant says that he denies all matters and things inconsistent with or contradictory to the averments contained in the 1st and 2nd paragraphs of this answer.

BARTLEY & SOUTHARD,
Solicitors for Defendant.

I, Samuel A. Peugh, do solemnly swear that I have read the above

answer, and know the contents thereof, and that the facts therein stated upon my personal knowledge are true, and that the facts therein stated upon information and belief I believe to be true.

SAM'L A. PUGH.

Sworn to before me, and subscribed in my presence, this 1st day of December, 1879.

R. J. MEIGS, *Clerk*,
By M. A. CLANCY,
Ass't Clerk.

69 In the Supreme Court of the District of Columbia.

CHARLES H. WINDER
vs.
RICHARD H. PORTER *et al.* } Equity. No. 7011.

Now comes the defendant, Thomas P. MacManus, and answers the bill of complaint against him and others in this cause exhibited, and answering, says: That all the matters and things alleged in said bill of complaint are fully set out in his original bill and supplement thereto, filed in this honorable court, in a cause wherein the complainant here- is a defendant, and he prays that the said bill and the proceedings in said cause may be taken as his full and particular answer to the bill herein filed.

And, further answering, this defendant says that his contract with the defendant Porter was signed by the complainant in this cause after he had been fully advised of the work done by this respondent, and of the evidence and of its nature and character which he had procured. That the said complainant signed the said contract not in order to give this respondent priority over him, but supposing that, as the counsel of record in said claim cases, the complainant would have the disbursement of the funds to arise therein, the complainant, at the request of Porter, and with a full knowledge of what this respondent was entitled to, wrote out the said contract and signed his name to acknowledge notice of the assignment to this respondent and to agree to pay him out of the moneys of Porter, which were expected to be paid into his hands out of said claims. Further answering, this respondent says that immediately upon obtaining said assignment he took pains to file the same among the papers belonging to said case in the Department of State, and in every way in his power took care to give notice of his claim upon the fees in said cases, and to prevent any person whatever from innocently acquiring an interest.

And, having fully answered, this respondent submits himself to the jurisdiction of your honorable court.

THOS. P. MACMANUS.

JESUP MILLER, *Sol'r.*

Subscribed and sworn to before me, December 1, 1879.

R. J. MEIGS, *Clerk*,
By R. J. MEIGS, JR., *Ass't.*

In the Supreme Court of the District of Columbia.

CHARLES A. WINDER
vs.
SARAH M. STANDISH *et al.* } No. 7011. Equity.

The plaintiff hereby joins issue with the defendant, Samuel A. Peugh.

C. INGLE,
L. G. HINE,
For Pl'tff.

In the Supreme Court of the District of Columbia.

CHARLES H. WINDER
vs.
SARAH M. STANDISH *et al.* } No. 7011. Equity.

The plaintiff hereby joins issue with the defendant, Thomas P. MacManus.

C. INGLE,
L. G. HINE,
For Pl'tff.

70 In the Supreme Court of the District of Columbia, 13th day of October, 1879.

CHARLES H. WINDER, Plaintiff,
vs.
SARAH MILDRED STANDISH, MARY ANN Conrow, Stephen Kearney Parsons, Richard H. Porter, Charles E. Rittenhouse, Samuel A. Peugh, Thomas P. MacManus, John Chiles, Stephen V. White, and Horace B. Claflin, Edward E. Eames, Horace J. Fairchild, William S. Dunn, Dexter N. Force, Daniel Robinson, and John Claflin, partners under the firm name and style of H. B. Claflin & Co., Defendants. } No. 7011. In Equity.

The said Charles E. Rittenhouse, reserving to himself all objections to said bill, for answer says:

1st. He admits that plaintiff is a citizen of Maryland, and resides in Baltimore, and that this defendant is a citizen of the District of Columbia.

2d. He admits also that the said defendants, Standish, Conrow, and Parsons contracted with and executed and delivered their respective contracts and letters of attorney to one Richard H. Musser to prosecute their several claims before the joint commission, constituted and entered into between the Republic of Mexico and the United States of America on the 4th day of July, 1868, upon the consideration and in manner and form as set forth in the third

paragraph of plaintiff's bill of complaint, and that said contract and letters of attorney are on file in the Department of State of the United States.

3d. Defendant admits and asserts, in answer to the 4th paragraph of said bill, that in the year 1870 the defendant, Richard H. Porter, was the duly authorized agent and attorney-in-fact of the said claimants, Standish, Conrow, and Parsons, substituted as such by said Musser under said letters of attorney. Defendant says that under and by virtue of such substitution the said Porter claimed and, as defendant avers, was entitled one-half the amount he would establish before the Joint Commission aforesaid, in favor of said claimants, and being desirous of a certain advance of money to him from this defendant and Samuel A. Peugh to enable him (the said Porter) to procure the testimony to sustain the said claims against the Republic of Mexico, and also the prosecution of the same, he (the said Porter) entered into an agreement in writing with this defendant and said Samuel A. Peugh, dated the 16th of February (a copy of which is hereunto annexed, marked A, which defendant prays made be made part of this answer), by which the said Porter assigns to said defendant and said Peugh the one-half of the fees or proportion of said claims to which he would be entitled on their recovery, to wit, to each twelve and one-half per cent., respectively, of the whole amount received, said defendant and Peugh to be at the expense of prosecuting the said claims before the commission, but the testimony to be produced to them by said Porter. Defendant further says that the amount of money required to be advanced to said Porter was $300, which amount at the time of the execution of said agreement was paid by said defendant and Samuel A. Peugh.

71 4th. Defendants say that by virtue of the agreement and assignment aforesaid he, together with Samuel A. Peugh, became largely interested in the recovery and establishment of said claims, and being so interested they employed Charles H. Winder, the plaintiff in said bill of complaint, under an agreement to pay him a fee contingent upon the recovery of said claims and payable therefrom when recovered and paid, to prepare a brief or briefs to be presented to said Joint Commission, and for his professional services as an attorney at law in prosecuting said claims to the end. Defendant admits that under said agreement the said claimant's said claims, but denies that he, the said plaintiff, had any understanding with or assurance from him, or, as he believes, from said Peugh; that said Porter would, as alleged in the fourth paragraph of said bill, upon coming to Washington, make a satisfactory arrangement with him for compensation. Defendant neither affirms nor denies the arrangement alleged in said bill to have been made with Porter by the said plaintiff, but says that if any arrangement was made it was without any complicity or agreement on the part of defendant by which his rights in the premises were in any way affected.

5th. Defendant says further that the agreement made by Porter with this defendant and Samuel A. Peugh was repeatedly endorsed in writing by said Musser, but that such writings were obtained

from this defendant as a loan by said Peugh, who, he is informed and believes, in turn loaned them to said Porter, by whom they were retained unlawfully and in fraud of the rights of this defendant.

6th. Defendant further says that being largely interested in said claims under and by virtue of the agreement aforesaid that both he and the said Samuel A. Peugh advanced divers other sums of money in the prosecution of said claims, and devoted much time and great labor and attention to their prosecution, and by such advances of money, employment of counsel, labor, and attention finally obtained the awards in favor of said Standish, Conrow, and Parsons, as set forth in plaintiff's bill.

7th. In answer to paragraph 5 of complainant's bill, defendant says it is not true that the money paid by this defendant and the said Peugh was $300, and no more; that as hereinbefore stated for that amount the agreement and assignment was originally made, but that by virtue of such assignment this defendant and said Peugh having become largely interested as aforesaid, they prosecuted said claim as hereinbefore set forth. He further avers that it is not true, as alleged in said bill, that the said Porter refunded to him and to said Peugh the money advanced by them to him, and "the said agreement was thereupon rescinded and delivered up to said Porter and canceled." On the contrary, defendant avers that the said Porter never refunded said money, or any part thereof, but by false representations and deceit he did induce this defendant to sign a paper relinquishing his claim in said awards to said Porter. Defendant denies, as asserted in said bill, that he, the said defendant, does not pretend that they have (meaning this defendant and said Peugh) or that either of them has any claims to said awards. On the contrary, he expressly avers that he knows of no reason why the claim of said Peugh is not a valid one, and avers that his (this defend-
72 ant's) claim of ownership in said awards obtained upon said claims should be recognized and enforced by this court, and allowed as fully as if said claimed relinquishment to said Porter had never been made; that the said Porter represented to him that he, the said Porter, had expended thousands of dollars upon a claim of Mrs. Hamilton, in which this defendant was interested, of which expenditure, as defendant alleges, contrary to their agreement in that case, he claimed that this defendant should refund him the one-half. Said Porter further represented to defendant at that time that he had fully examined said case of Mrs. Hamilton, and that he had obtained testimony therein which would render its recovery certain. Defendant, whilst denying the validity of Porter's claim against him for thousands of dollars, as alleged, was nevertheless alarmed that such claim should be set up against him. Under the representations made he was nevertheless anxious to retain an undisputed interest in said Hamilton case. Upon Porter's promise to withdraw any claim for expenditures in said Hamilton case he signed the said relinquishment.

Defendant further says: First. That at the time said allegations were made he, the said Porter, had not procured, nor did he know

of, testimony which would render the recovery of said Hamilton case certain. On the contrary, defendant believes he can prove, and therefore avers, that the said Porter must have known the said claim of Mrs. Hamilton was invalid.

Second. He, the said Porter, had not expended thousands of dollars in the preparation of said Hamilton case, as alleged. On the contrary, in subsequent business transactions with this defendant, he only claimed to have paid $360, of which amount he only claimed (contrary to agreement, as defendant alleges) the sum of $180.

Third. He, the said Porter, in a subsequent transaction, furnished a statement of expenses in said case, amounting to $360, as a part consideration in such subsequent business, as if such claimed relinquishment had never been made. Wherefore this defendant avers, in consideration of the premises and such false and fraudulent representations made, as aforesaid, by said Porter, the said claimed relinquishment was fraudulent and void, and defendant claims to hold under the assignment from Porter as originally made.

8th. Defendant avers further that, although he signed the claimed relinquishment, he did not surrender the original agreement by a delivery thereof to Porter, but that he retained the same in his possession, although such delivery was requested by said Porter and refused by him; that he lost sight of said paper, and for a long time believed it to be in possession of said Peugh; that he has learned since that such paper was in possession of said Porter, to whom he had refused to deliver it; that he never did deliver it to said Porter, and therefore avers that he obtained the same surreptitiously, has held and still holds it without right and in contravention of the defendant's rights in the premises.

9th. Defendant says that his agreement with Porter was known and understood by said plaintiff, and that if he, the said plaintiff, entered into any agreement with said Porter it was with a full knowledge and understanding of such rights, and subject to the lien upon said awards of this defendant and said Samuel A. Peugh.

73 10th. What is not hereinbefore admitted in plaintiff's bill is denied.

C. E. RITTENHOUSE.

HUGHES, BUCHANAN & DEWEES,
Attorneys for C. E. Rittenhouse.

I do solemnly swear that I have heard the foregoing answer by me subscribed and know the contents thereof, and that the facts therein stated upon my personal knowledge are true, and that the facts therein stated upon information and belief I believe to be true.

C. E. RITTENHOURE.

Subscribed and sworn to before me this 18th day of December, A. D. 1879.

[SEAL.] N. CALLAN,
Notary Public.

EXHIBIT A.

Memorandum of agreement made by and between Richard H. Porter, of St. Louis, Missouri, and Charles E. Rittenhouse and Samuel A. Peugh, of the city of Washington, District of Columbia.

Whereas said Richard H. Porter, acting as attorney for Richard H. Musser, by authority of substitution from said Musser, who, acting in behalf as attorney-in-fact for Mildred Standish, widow of Austin M. Standish; Mrs. —— Conrow, widow of Aaron H. Conrow, and —— Parsons, father of Monroe M. Parsons and guardian of the son of Monroe M. Parsons, above named, all of the State of Missouri; and

Whereas said Porter is desirous of the aid of said Rittenhouse and Peugh in a certain advance of money to said Porter, to enable him to procure the testimony to sustain the claims these other certain named parties have against the Government of Mexico for the robbery and destruction of the lives of those whom they represent, under the treaty made between the United States and the Republic of Mexico, on the 4th day of July, 1868, and also the prosecution of said claims before a commission appointed by and between the two republics, and now in session in the city of Washington, D. C.; and

Whereas said Porter being in his agreement with the said parties claiming against Mexico, as aforesaid, entitled to one-half of any amount to which he may establish claim before said commission, he hereby agrees to, and does hereby, transfer and assign, in consideration of the premises, with the said Rittenhouse and Peugh, one-half of the amount he is entitled to receive under and by virtue of his authority in the premises, the said last-named parties to be at the expense of prosecuting the said claims before the commission herein named, but the testimony to be produced to them by the said Porter.

In testimony whereof we and each of us have hereunto set our hands and seals this 16 day of February, 1870.

(Signed) R. H. PORTER. [SEAL.]
S. A. PEUGH. [SEAL.]
C. E. RITTENHOUSE. [SEAL.]

In the Supreme Court of the District of Columbia, the 24th day of Jan'y, 1880. Equity.

CHARLES H. WINDER
vs.
SARAH M. STANDISH *et al.* } No. 7011.

The plaintiff hereby joins issue with the defendant, Charles E. Rittenhouse.

C. INGLE,
L. G. HINE,
Of Counsel for Pl'tff.

74 In the Supreme Court of the District of Columbia, this — day of February, A. D. 1880. In Equity.

Between CHARLES H. WINDER, Plaintiff,
and
SARAH M. STANDISH, MARY A. CONROW, STEPHEN K. PARSONS, RICHARD H. PORTER, CHARLES E. RITTENHOUSE, SAMUEL A. PEUGH, THOMAS P. MACMANUS, JOHN CHILES, STEPHEN V. WHITE, and HORACE B. CLAFLIN, EDWARD E. EAMES, HORACE J. FAIRCHILD, WILLIAM S. DUNN, DEXTER A. FORCE, DANIEL ROBINSON, and JOHN CLAFLIN, partners under the firm name and style of H. B. Claflin & Co., Defendants.

No. 7011. Eq. Doc.

The answer of the above-named defendant, John Chiles, to so much of the bill of complaint of the above-named plaintiff as he is advised and believes it is material for him to answer unto.

So answering, I say as follows:

I admit, upon information and belief, the citizenship and residence of the above-named plaintiff and defendants, as alleged in the first and second paragraphs of said bill of complaint. I admit, as alleged in the nineteenth paragraph of said bill, that I have filed my bill of complaint in this court against the above-named plaintiff, and all of my co-defendants, except the above-named Horace B. Claflin and the others composing the commercial firm of H. B. Claflin & Co.

In that bill I alleged in substance that in the summer of the year 1869, in the city of Washington, District of Columbia, Richard H. Porter having learned from me of the robbery and murder of three certain American citizens, named respectively Parsons, Conrow, and Standish, in Mexico, in the year 1865 by Mexican soldiery, and that I was desirous of securing the claims of the representatives of said murdered men for prosecution for compensation against the Republic of Mexico before the joint commission created under the treaty between the United States and Mexico of July 4, 1868, expressed to me his desire to unite with me in securing said claims, and if secured to be interested with me in their prosecution and in the fees or compensation that should be paid in consideration thereof; that thereupon we, without executing any instrument of writing to evidence it, did enter into a contract to that effect, the said Porter expressly stipulating thereby that we would go to Missouri where the representatives of said deceased persons resided, and get them to entrust to us the prosecution of their respective claims, and that he would, out of his own money, defray all the expenses of securing, preparing, and duly prosecuting the claims before said commission. It was further thereby stipulated and agreed that I and said Porter should be equally interested in the compensation or fees that should be paid for the prosecution of said claims, my one-half being in consideration of my having first informed said Porter of said robberies and murders and of the facts in relation thereto, and the means by

which said claims were to be secured for prosecution and were to be established after their presentation to said commission; and,
75 further, in consideration of my rendering such assistance as said Porter might, during the prosecution of said claims, call upon me to render in the way of securing the necessary testimony on which said claims should be submitted for adjudication; that I and said Porter immediately thereafter entered upon the execution of said contract; that said Porter left the city of Washington and was absent some several weeks, then returned, and thereafter reported to me that he had not been able to make any agreement with the claimants, because, as he believed, of his being a stranger to them, but that he had obtained the assistance of Richard H. Musser, a lawyer of Saint Louis, Missouri, who was well known to the said representatives, and had entered into a contract with said Musser to the effect that he, Musser, should procure letters of attorney and agreements as to fees from said representatives, and that all the fees agreed to be paid by them should be equally divided between said Musser and himself.

The said Porter thereupon asked my consent to this agreement or contract he had made with said Musser, and also to consent that our contract should be and stand modified in consequence of this contract made with Musser, so that one-half of the fees to be so paid should go to said Musser, one-fourth of them to me, and one-fourth to him, Porter. That I agreed to the said proposition, and ratified and confirmed the said contract with Musser. That no instrument of writing was executed by said Porter and Musser to evidence the said contract between them. That said Musser secured said claims for prosecution and received from the representatives of said deceased persons their respective letters of attorney and agreements as to fees. That said claims were duly prepared, presented, and prosecuted under said employment and contracts, and that I and said Musser faithfully performed our respective stipulations under said contracts, all of which resulted in awards favorable to the claimants in amounts stated.

I also claimed in and by said bill that I was justly entitled to have and receive under said contracts one-fourth of the compensation that was to be paid for the prosecution of said claims, and prayed that the same be decreed to be paid to me.

I admit that the above-named plaintiff, Charles H. Winder, answered my said bill. Further answering the said allegations of said nineteenth paragraph, I say as follows:

That issues having been duly formed, I have proceeded to the taking of testimony of witness in support of the facts set forth and alleged in and by said bill, and I now here respectfully ask that my said bill, and the testimony taken in support thereof, may be read on the trial of this cause, and it be taken and considered as part of this my answer.

Further answering, I say in addition to what I alleged in my said bill of complaint, that by the said agreement between the said Musser, Porter, and myself, the professional management of the three cases of the representatives of said murdered persons was committed

to said Musser, and the attorney appointed and employed by the United States to take charge of and conduct the prosecution of all claims of citizens of the United States against the Republic of Mexico,
76 presented by the United States to said commission for adjudication—the United States and Mexico being under and by said treaty the parties prosecutors of claims before said commission. That I looked to these alone as attorneys charged with the preparation, presentation, and prosecution of said claims for, to, and before said commission, had full faith in their zeal, energy, and skill, and now here state that they discharged their respective duties in a manner entirely satisfactory to me, and, to the best of my knowledge and belief, to the claimants.

There never existed any necessity for the employment or services of the plaintiff Winder, or either of my co-defendants Peugh, Rittenhouse, and MacManus, and I deny emphatically having had, during the prosecution of said claims, any knowledge or information of the employment or pretended employment of either or all of them, and of any services rendered by either or all of them. It was not until after the making of said awards had been made public that I heard of either of them as having or claiming to have any interest whatever in said compensation or fees.

I aver it to be true, as I stated in me hereinbefore mentioned bill of complaint, that if said Porter entered into any agreement with or made any transfer or assignment to said Peugh, Rittenhouse, Winder, MacManus, or White, he diligently kept the same secret from me, and did so in fact, for himself, and only in regard to his own individual interest in said compensation. I never in any manner authorized him to enter into any such agreement on my account or make any such transfer or assignment of any portion of my interest, or in anywise to bind me or my interest thereby.

I have never received any benefit from any such employment, agreement, transfer, or assignment, and never having in any manner recognized or ratified the same, they, nor either of them, are binding upon me or my interest.

I deny that either said Winder, Peugh, Rittenhouse, or MacManus was at any time the attorney of said claimants, or either of them, or charged with or rendered any duty or service as such. If the said Winder, Peugh, Rittenhouse, MacMauus, and White, or either of them, dealt with said Porter they, or he, did so without concern about the rights or interests of any other person than said Porter in said compensation or fees, and relying exclusively upon his representations, and solely in regard to his interest.

It was wholly the fault of the plaintiff that he did not, during his dealings with my co-defendants, Rittenhouse, Peugh, and Porter, nor at any other time, know of me or my rights and claims, or of my agreements, understandings, and arrangements with Porter, or of Porter's with Musser. He trusted said Porter implicitly, whereas had he put himself upon proper inquiry he would not have stood so uninformed.

The plaintiff's assertion that he has reason to believe that my said bill of complaint was an afterthought, and is a mere attempt to

speculate upon the chances of litigation, is without any foundation whatever, as ever since it came to my knowledge that others than Porter and Musser were preferring claims to portions of said fees I have been represented by counsel of high respectability and the Department of State duly informed thereof, all of which the
77 plaintiff could easily have known had he so desired, if, indeed, he has not forgotten what he must have once known. I deny the existence of any fact to warrant any such belief. I deny what is alleged in the third and fourth paragraphs of complainant's bill as to the contracts or agreements as to fees executed and delivered by the claimants to said Musser, being on file in the Department of State. Neither of them, as I am informed, is there on file. My co-defendant Porter is the one who is known to have last had them in his possession, and I charge, upon information and belief, that he is now concealing or has destroyed them in the belief that such concealment or destruction would enure to his particular interest by the non-appearance of the positive proof that said Musser never made any assignment or transfer of the same or of his interest thereunder to said Porter.

JOHN CHILES.

DISTRICT OF COLUMBIA, *County of Washington,* } *ss:*

I do solemnly swear that I have read the answer foregoing by me subscribed, and know the contents thereof, and that the facts therein stated upon my personal knowledge are true, and that the facts therein stated upon information and belief I believe to be true.

JOHN CHILES.

Sworn before me, Feb'y 18, 1880.

R. J. MEIGS, *Clerk.*

LUTHER H. PIKE,
Sol. for Defendants.

In the Supreme Court of the District of Columbia, the 25th day of February, 1880.

CHARLES H. WINDER *vs.* SARAH M. STANDISH *et al.* } No. 7011. Equity.

The plaintiff joins issue with the defendant John Chiles.

C. INGLE,
L. G. HINE,
For Plaintiff.

In the Supreme Court of the District of Columbia.

CHARLES H. WINDER, Complainant,
vs.
SARAH M. STANDISH *et al.*, Defendants.

The separate answer of Richard H. Porter, one of the defendants,

to the bill of complaint of Charles H. Winder, in chancery exhibited.

This defendant reserving all exceptions and benefits to the manifold errors and uncertainties in said bill contained, for answer unto so much thereof as he is advised that it is material and proper for him to make unto, answering says:

1st. I admit the first and second paragraphs of said bill.

2. Answering third paragraph of said bill, I say that said Musser was my attorney, and obtained said powers of attorney, with power of substitution in order to substitute me, in accordance with the agreement between said Musser and myself, and said Musser was to have been paid by me as my attorney, and in no other was he to act. His duty was to take the depositions.

3. I admit the fourth paragraph of said bill.

4. I admit the fifth paragraph of said bill.

78 5. I admit the sixth paragraph of said bill.

6. I deny each and every averment in the seventh paragraph of said bill.

7. I deny the eighth and ninth paragraph- of said bill.

8. In answer to the tenth paragraph, I say if I could collect all sums due me, I would have after paying my debts a large surplus of money.

9. I admit the eleventh paragraph of said bill.

10. I have no personal knowledge of the averments in twelfth paragraph of said bill.

11. In answer to fifteenth paragraph of said bill, I say I am the only person entitled to receive said payments.

12. I admit the seventeenth paragraph of said bill.

13. I deny most positively the eighteenth paragraph of said bill.

14. I deny that I ever had any contract with Chiles, or that I ever agreed to pay said Chiles any sum whatever. Said Chiles never rendered me any service or gave me any information that I did not know before.

15. I admit the twentieth paragraph of said bill.

Having answered, prays to be heard, dismissed, &c.

R. H. PORTER.

Sworn to before me, February 27, 1880.

R. J. MEIGS, *Clerk*,
By M. A. CLANCY, *Ass't Clerk*.

In the Supreme Court of the District of Columbia.

CHARLES H. WINDER
vs.
SARAH M. STANDISH *et al.* } No. 7011. Equity.

The pluintiff joins issue with the defendant, Richard H. Porter.

C. INGLE,
L. G. HINE,
Of Counsel for Pl'tff.

In the Supreme Court of the District of Columbia.

CHARLES H. WINDER
vs.
SARAH M. STANDISH *et al.* } No. 7011. Equity.

The order passed in this cause Oct. 23, 1879, requiring the defendants, Sarah M. Standish, Mary A. Conrow, Stephen K. Parsons, Stephen V. White, Horace B. Claflin, Edward E. Eames, Horace J. Fairchild, William S. Dunn, Dexter N. Force, Daniel Robinson, and John Claflin, to cause their appearance to be entered herein on or before the first rule day, occurring forty days after the said 23d day of October, 1879, having been duly published, and the said defendants having failed to appear and answer the bill of complaint herein:

It is thereupon, this first day of April, 1880, by the court adjudged, ordered, and decreed that the said bill and the matter thereof be, and the same are hereby, taken for confessed as against the above-named defendants.

A. B. HAGNER,
Ass't Justice.

79 WASHINGTON, D. C., *February* 30, 1880.

Messrs. C. Ingle and L. G. Hine, Solicitors,
To Washington Law Reporter, 621 F street, Dr.

1879, Oct. 27. To pub. abs. def't's notice, Windner *v.* Standish $4 00
Received payment.

JOHN L. GINCK & CO.

UNITED STATES OF AMERICA, }
District of Columbia, } *ss:*

On this 28th day of February, A. D. 1880, personally appeared before me, the undersigned, a notary public in and for the District aforesaid, John L. Ginck, being personally well known to me, and made oath in due form of law to the following statement, viz: That affiant is one of the publishers of the "Washington Law Reporter," a newspaper published in the city of Washington, D. C.; that the annexed notice was published in said "Washington Law Reporter" once a week for three consecutive weeks, as follows: Oct. 27, Nov. 3 and 10, 1879.

JOHN L. GINCK.

Sworn and subscribed before me the day and year above written.

JAMES T. POWELL,
Notary Public.

In the Supreme Court of the District of Columbia, this 23d day of October, 1879.

CHARLES H. WINDER
vs.
SARAH M. STANDISH *et al.* } No. 7011. Equity.

On motion of plaintiff, by Messrs. Ingle and Hine, his solicitors,

it is ordered that the defendants, Sarah M. Standish, Mary A. Conrow, S. K. Parsons, R. H. Porter, Stephen V. White, H. B. Claflin, John Claflin, E. E. Eames, H. J. Fairchild, W. S. Dunn, Dexter N. Force, and Daniel Robinson cause their appearance to be entered herein on or before the first rule day, occuring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the court: MACARTHUR, *Justice, &c.*,
True copy. Attest: By R. J. MEIGS, *Clerk, &c.*

C. INGLE AND L. G. HINE, *Solicitors.*

In the Supreme Court of the District of Columbia.

MACMANUS *vs.* WHITE *et al.* } No. 6382. Eq. Doc. 18.

At an examination held in this cause before me, an examiner in chancery, commencing March 22, 1880, personally appeared Charles E. Rittenhouse, Samuel A. Peugh, and Stephen C. Mirick on behalf of the defendant Peugh, and after the witnesses were duly sworn the within depositions were written down from the statements of the witnesses, read to them and signed by them in my presence.

JNO. CRUIKSHANK,
Examiner in Chancery.

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MCMANUS *vs.* WHITE *et al.* } No. —. Eq. Doc.

MARCH 22, 1880.

Met pursuant to agreement of counsel.
Present: Mr. Peugh, for himself.

Whereupon, at 12.30 p. m., CHARLES E. RITTENHOUSE, one of the defendants, is examined by Mr. PEUGH, for defendant Peugh, as follows:

Q. Mr. Rittenhouse, you have been examined in relation to the prosecution of the claims of Conrow, Standish, and Parsons; state if Mr. S. A. Peugh was interested with you in these cases, and to what extent.

A. Yes, we were interested to the extent of one-half of Dr. Porter's interest, and our interest was to be equal.

Q. Was any person employed by either you or Mr. Peugh to assist in the prosecution of said claims; and, if so, how, and what was the nature of the agreement?

A. Yes; we employed Mr. Charles H. Winder as our attorney to prosecute these cases, and agreed to pay him a contingent fee of $1,000 for his services until the cases were finally disposed of.

Q. You have referred in your testimony to R. H. Musser, of St. Louis; how was he interested in these cases?

A. He was interested, as I understood, with Porter, having obtained powers of attorney in his own name from the claimants, and

afterwards substituted Porter as the attorney in charge; what their own private arrangements were, I am unable to state.

(Here Mr. Pike, for defendant Chiles, appears.)

Q. Did you apprise said Musser of the agreement of yourself and Mr. Peugh with Dr. Porter?

A. Yes.

Q. Was a copy of said agreement sent to said Musser?

A. Yes.

Q. Did he receive said copy?

A. He acknowledged the receipt and approved of it.

Q. About what time was this copy of the agreement between yourself and Peugh with Porter sent to Musser?

A. I am unable to state exactly when, but a short time after it was made, I think.

Q. Was the approval of Mr. Musser verbal or in writing?

A. In writing.

Q. Where is that writing?

A. In some of the letters which I received from him in the correspondence on the subject.

Q. What has become of that writing?

A. The letters referred to of Mr. Musser to me were loaned to Mr. Peugh, and I have never seen them since.

Q. You have stated that Dr. Porter importuned you into a relinquishment of your interest in these claims; in the relinquishment between Porter and yourself, did you intend to relinquish Peugh's interest therein?

(Objected to, as immaterial.)

A. No. I had not the remotest idea of doing so, having no authority from Mr. Peugh to include him.

81 Q. How did R. H. Porter understand the relinquishment at the time made, to wit, September 8, 1871, as relinquishing any other interest than yours or Peugh's, also?

(Objected to, as irrelevant and immaterial, and as calling for an expression of opinion on the part of the witness.)

A. Mine only.

Q. Did you intend the original contract, with your individual relinquishment thereon, to fall into the hands of the said R. H. Porter?

A. No.

Q. Did you or did you not intend and believe, and so assert to Mr. Peugh that you had delivered it to Mr. Peugh as the proper custodian of the contract, after having written the relinquishment made thereon in September, 1872?

(Objected to, as leading, irrelevant, and immaterial, and argumentative.)

A. Believing the original agreement to be then Mr. Peugh's property, it was my intention to deliver it to him and was under the impression that I had done so, as I had often remarked to him.

Cross-examined by Mr. PIKE for defendant CHILES:

Q. Give the date of the contract Dr. Porter entered into with you and Mr. Peugh.

A. In Februrary, 1870; I think the 16th.

Q. How many months after that was it that you sent Col. Musser a copy of it?

A. I am unable to state exactly, but as soon as he requested it of me.

Q. Was it 18 months or 12 months afterwards?

A. It may have been 12 months afterwards, but I really am unable to give the exact time, though sent, as stated, as soon as he requested it.

Q. Are you prepared to swear that it was not until in July, 1871, that you sent such a copy?

A. I am prepared to swear that I can make no other statement in regard to it.

Q. Have you no letter, or other memorandum book, by reference to which you can find precisely the date on which you sent such copy?

A. I have not any other than the correspondence referred to as loaned to Mr. Peugh.

Q. You have alleged that Col. Musser approved the contract Porter entered into with you and Peugh. Have you or can you procure a correct copy of the letter or letters whereby you assert Col. Musser expressed his said approval?

A. I reassert positively that Musser did endorse said agreement of Porter's with Peugh and myself, but I have no record other than his letters to me to refer to.

Q. What do you mean by the word "endorse," in your answer to the last above question?

A. I mean that he approved of it unqualifiedly, either verbally or in writing.

Q. Can you give the express language of the letters whereby you affirm Col. Musser approved said contract?

A. I cannot, as I have not seen the letters for a long time.

82 Q. Did not Col. Musser, in one or all of the letters you refer to, inform you that agreement between himself and Dr. Porter was that the fees in the Standish, Conrow, and Parson's cases were to be divided equally between himself and Dr. Porter, he, Porter, to defray out of his own money all the expenses incident to the prosecution of these claims?

A. I have no recollection of any reference to their agreement as to their interest, but I remember that a dispute arose between them as to their rights and relations to these claims, hence the correspondence of Mr. Musser with me, which was always of a friendly character, as was his individual intercourse until after the awards were made, when he seemed to have some ulterior design.

Q. Did not you and Mr. Peugh, believing in the representations made by Dr. Porter to you, decline to continue correspondence with him, turning over his letters to you to Dr. Porter, and also sur-

rendering to Dr. Porter a letter from him to Musser, which he, Musser, sent you for your information?

(Objected to, so far as relates to Mr. Peugh, and to the whole question as irrelevant to this issue.)

A. I did not decline to continue the correspondence with Mr. Musser, and have no present recollection of the special letter referred to.

Q. You have testified that you and Mr. Peugh employed Mr. Winder upon a contingent fee of $1,000 for the prosecution of the cases. Do you now affirm that you and Mr. Peugh are still under obligation to pay Mr. Winder this contingent fee out of any moneys you may receive under and by virtue of your said contract with Porter?

(Objected to by Mr. Peugh, as irrelevant to any matter between Mr. Rittenhouse, Peugh, and Winder.)

(The witness objects to answer these interrogatories in the absence of his counsel, except with the understanding that Mr. Dewees, said counsel, may have the privilege of reviewing these questions and answers, and take any action he may deem necessary thereto.)

A. The contingent fee referred to as agreed by myself and Mr. Peugh with Mr. Winder, was to be paid to him out of any receipts from said claim and not from any individual interest which Mr. Peugh and myself might ultimately have.

C. E. RITTENHOUSE.

Sworn to and subscribed before me, this 22d day of March, 1880.

JNO. CRUIKSHANK,
Examiner in Chancery.

83 McMANUS *vs.* WHITE *et al.*

SATURDAY, *April* 17, 1880.

Met pursuant to notice. Present: Counsel for Peugh, Porter, and Winder, and for McManus, whereupon SAMUEL A. PEUGH, of lawful age, a resident of Washington, D. C., being sworn on his own behalf, deposes and says:

I am a defendant in this case, and am represented by cross-bill and amended cross-bill by Messrs. Bartley, Southard, and Hay. In February, 1870, Dr. Richard H. Porter, then of St. Louis, Mo., but now of Louisville, Ky., solicited Mr. Charles E. Rittenhouse and myself to undertake the prosecution of three certain claims before a commission created by a treaty between the United States and Mexico of July, 1868. On the 16th day of February, 1870, said Porter, Charles E. Rittenhouse, and deponent entered into a written agreement for the purpose of prosecuting said claims, to wit, Messrs. Standish, Conrow, and Parsons, and to make him an advance of $300 for the purpose of procuring testimony to sustain said claims. In pursuance of said agreement we made the advance of $300, each his $150, and at once commenced the investigation of those cases,

first procuring translations of the Spanish testimony (filed by Mexico, permission for which was granted by the commission or State Department). We then procured copies of the instructions issued by said commission, and promptly commenced their prosecution according to our agreement. Casting around for a suitable counsel in the matter to assist us in such important cases I selected Mr. Charles H. Winder on account of my estimate of his competency, and of his having ample leisure, as he informed me, and proposed to him, as our fees were contingent, a contingent fee of $1,000 for his aid. I obtained the approbation of Mr. Rittenhouse to the suggestions I had made to Mr. Winder, to which he assented. I immediately procured testimony after translation, and a copy of a manuscript filed in the State Department by Mr. Musser some month or two previously. After Mr. Winder and I had analyzed the testimony, both American and Mexican, and the rules applicable to the mode of prosecuting claims before the commission, we then proceeded promptly and diligently in the labor of their prosecution, the first of which was to prepare memorials comformable to the rules of the commission. After having prepared the memorials they were sent to Colonel Musser for execution by the claimants, with whom we had been placed in contact by Dr. Porter as a party with whom we should cooperate. The next step was to procure testimony to substantiate the allegations of the memorial. We soon found testimony on file containing matter which we deemed might be unfavorable in its effect on the commission, to wit, by being called the "murdered rebel generals." We prepared new affidavits eliminating this obnoxious matter and conformable to the rules of the commission, and while stat-
84 ing "we," Col. Winder and myself, I mean to be understood as yielding to his superior judgment, in these as in all matters pertaining to the prosecution of these claims, as in employing him it not only met the approbation of Mr. Rittenhouse, but of Dr. Porter, whose appreciation of my choice and his service as to add to the compensation that Mr. Rittenhouse and I had agreed to pay him. The manner of performing the work in this matter was laid out somewhat in this wise: Mr. Rittenhouse carried on the correspondence between Dr. Porter and Mr. Musser, I of procuring the testimony for Mr. Winder's action and consideration, and taking his judgment in the premises as counsel, that the affidavits prepared by Col. Winder and myself (for we had to prepare triplicates in each case) were handed by me to Mr. Rittenhouse, who transmitted them to Mr. Musser for their proper execution. These cases, however, were analogous in kind, the murders occurred at the same time as supposed, and if my memory serves me correctly, being nearly ten years ago, one case only was made a test case. (Counsel for Peugh here files paper marked S. A. P. No. 1.)

EXHIBIT S. A. P. No. 1.

UNITED STATES OF AMERICA, DEPARTMENT OF STATE:

To all whom these presents shall come, Greeting:

I certify that the document hereto annexed is a true copy from

the files of this Department. In testimony whereof, I, William M. Evarts, Secretary of State of the United States, have hereunto subscribed my name and caused the seal of the Department of State to be affixed. Done at the city of Washington, this 3d day of May, A. D. 1879, and of the Independence of the United States of America the one hundred and third.

[SEAL.] WM. M. EVARTS.

Copy memorandum of agreement made by and between Richard H. Porter, of St. Louis, Missouri, and Charles E. Rittenhouse and Samuel M. Peugh, of the city of Washington, District of Columbia:

Whereas said Richard H. Porter, acting as attorney for Richard H. Musser by authority of substitution from said Musser, who acting as attorney-in-fact for Mildred Standish, widow of Austin M. Standish; Mrs. Conrow, widow of Aaron H. Conrow, and Parsons, father of Monroe M. Parsons and guardian of the son of Monroe M. Parsons, above named, all of the State of Missouri; and whereas said Porter is desirous of the aid of said Rittenhouse and Peugh in a certain advance of money to the said Porter to enable him to procure the testimony to sustain the claims of these other certain named parties have against the Government of Mexico for the robbery and destruction of the lives of those whom they represent under the treaty made between the United States and the Republic of Mexico on the 4th day of July, 1868, and also the prosecution of said claims before a commission appointed by and between the two said republics, and now in session in the city of Washington, D. C.; and whereas since Porter being, in his agreement with the said parties claiming against Mexico, as aforesaid, entitled to one-half of
85 any amount to which he may establish claim before said commission, he hereby agrees to, and does hereby, transfer and assign, in consideration of the premises with the said Rittenhouse and Peugh, one-half of the amount he is entitled to receive under and by virtue of his authority in the premises, the said last-named parties to be at the expense of prosecuting the said claims before the commission herein named, but the testimony to be produced to them by the said Porter. In testimony whereof, we, and each of us, have hereunto set our hands and seals, this 16th day of February, 1870.

R. H. PORTER. [SEAL.]
S. A. PEUGH. [SEAL.]
C. E. RITTENHOUSE. [SEAL.]

WASHINGTON, D. C., *Sep. 2d*, 1872.

In consideration of said Porter having paid certain expenses on the claim of Mrs. Hamilton for $135,000, now pending before the Southern Claims Commission, one-half of which he demands of me on account of my interest therein, I hereby relinquish to him, said Porter, all my right, title, and interest in and to the several claims referred to in the foregoing agreement, and release him from his

obligation to repay me the sum advanced by me for my aforesaid interest in these Mexican claims.

C. E. RITTENHOUSE.

This is a certified copy of a contract entered into between Messrs. Porter, Rittenhouse, and Peugh, before referred to; accordingly Mr. Musser was furnished with what was deemed proper as suitable information in procuring the testimony such as we directed to be obtained. In the progress of this correspondence Mr. Musser asked for a copy of the agreement made between Doctor Porter, Rittenhouse, and Peugh, which Mr. Rittenhouse made and transmitted to him (since filed in the testimony of said Musser in the case of Chiles *vs.* Porter *et al.*) Mr. Musser acknowledged to Mr. Rittenhouse the receipt of said agreement, and approved the same (see copies of Musser's letter to Rittenhouse, exhibits from 1 to 9 in said Chiles' case). Mr. Winder and myself and Dr. Porter were very much thrown together in pursuance of the prosecution of these claims, acting in perfect harmony with the use of legitimate means to a legitimate end. After having procured what was deemed by us adequate testimony to the successful prosecution of these claims, Mr. Winder, at great labor, prepared the briefs, with my assistance, and the argument more his own than mine. After they were prepared and printed according to the requirements of the commission, I took them to the State Department and filed them. My impression is, after so long a lapse of time, that there were two briefs filed before the Secretary of State for the commission. The evidences, briefs, and arguments, which were deemed conclusive by us of all the questions involved in the case, and in relation to which no new testimony was filed, were all embraced in the papers and so forth filed on the 30th day of March, 1872, the last day allowed but one by the commission to file new testimony. To this printed brief the names of R. H. Porter
86 and myself as are appended as attorneys, and C. H. Winder named as of counsel. The names of R. W. Johnson, of Pike and Johnson, was added after the brief had been filed by us in manuscript. Col. Winder, Dr. Porter, and myself had frequent interviews and consultations conjointly in regard to them until the final action upon them by the board and the umpire. Subsequently I casually saw Dr. Porter. We often spoke of the success of the claims, no objection ever having been made as to our title to the fees agreed upon, and as frequent acquiescence and acknowledgement as to our right under the contract and agreement in the premises, and it is only until recently, or long since the awards, that Dr. Porter has interposed any objection to his gratification at their payment, in evidence of which I herewith file a letter from Dr. Porter of November 3, 1877, and ask that it be made an exhibit in this case. (Production of letter objected to by counsel for Porter, as having nothing to do with the case as far as the witness is concerned.) I also file letter of November 12, 1877, as an exhibit in this case, and refer to the letter filed by Thomas P. McManus in this case, in which his recognition of my rights to compensation as per contract is admitted. (This letter objected to for same reasons.)

Letters offered in evidence, and marked S. A. P., Nos. 2 and 3.

EXHIBIT S. A. P., No. 2.

NOVEMBER 3RD, 1877.

Mr. A. S. PEUGH.

DEAR SIR: It becomes necessary I should go home, therefore I leave this evening 7.40. You must look after the bond I sent to Independence to be filled up, and directed it to be returned him to 912 F street. Please look after it; sign it yourself. Get Mr. Dun to do the same. I understand he has bought out Rittenhouse and sent it to No. 242 Broadway, Louisville, Ky. You are authorized — any letter from Independence, Mo. Now, don't fail to attend to this. As soon as I get the money I am expecting I will send you $150; that I can do just as well as if I were here. I saw Winder this evening. He says Rittenhouse met him to-day and claimed an interest in Mexican claims. What does the little fool mean? I have his relinquishment in full. He tells Winder I have collected some claims that I have assigned to him. He lies when he says so. I wish you would see him and see what he is after. You thought the St. Louis suit was of no use. What do you think now? There is nothing like having men in black and white. Where would he be now but for the papers I have signed by him; his memory is very convenient one. Nothing but paper will do for him. Let me hear from you.

Respectfully yours,

R. H. PORTER,
242 *Broadway, Louisville, Ky.*

87 EXHIBIT S. A. P., No. 3.

LOUISVILLE, KY., *November* 12, 1877.

Mr. A. S. PEUGH:

Your P. O. card received. I have not heard anything from the bond I sent to Missouri. If it is not there now, it certainly will come. I wish you would keep a look out for and send it to me as soon as you receive it. I may have to return to Washington any time. My business may call me there any time. I am watching the Mexican business, and will be on hand when necessary. What does Rittenhouse mean to claiming to have interest in the Mexican claims? Is crazy, or fool, have—or what is he? I wish I could send you some money; but can't now.

Respectfully, yours,

R. H. PORTER.

These two letters, and the one to McKee, also referred to, filed in this case heretofore, are produced to rebut the assertions in Dr. Porter's answer that Peugh had relinquished his right under the contract to him, Porter, when in fact Mr. Rittenhouse only had relinquished his right under the contract, and Dr. Porter has never until very recently set up such claim. In further confirmation of this fact, Dr. Porter and myself and others went to the office of Mr. Penn Clarke, attorney of this city, and there verbally agreed that, with a

view to defeat the claims of S. V. White, a defendant in this case, to enter into arrangements with this deponent for said purpose. In Dr. Parson's answer in the case he uses this language: "Respondent then returned to Messrs. Rittenhouse and Peugh the money borrowed, and took up the contract aforesaid, and from that time on relied on Mr. Winder as counsel." So far from this being true, Dr. Porter did not pay me one cent, and, Mr. Rittenhouse says, did not take up the contract; and in confirmation of his, Rittenhouse's, belief of that fact, has repeatedly said to me, in the most earnest manner and belief, that he had given me the contract as its only proper custodian, and that Dr. Porter, after Mr. Rittenhouse had placed his relinquishment thereon, and fearing it might by possibility be in his possession, which he admitted it was, and frequently promised to return it to me, saying Mr. Rittenhouse only had relinquished his claim, and that he must be a damned fool to set up any demand for his portion of the fees, and that it should make no difference between he and I; and that it was not until since 1878 that he, Porter, interposed any objection to my payment. Upon several occasions since the awards he has proposed to me to scale my fees, and to know what precise amount would settle with me, saying that he had obligated himself for certain fees to Mr. Winder; to which proposition I assented, saying I would take $8,000, but would listen to a proposition from him. Upon learning the complications in which he had involved us with Mr. S. V. White, of New York, a defendant in this case, I at once addressed a communication to the State Department, stating the relation in which I stood to these cases; how it was created; alleging the obligation to Mr. Winder, and generally setting forth the services rendered and the moneys advanced for the purpose of procuring testimony by myself and my coadjutors.

Examination adjourned to Monday, the 19th of April, 1880, at 3 p. m.

J. C., *Examiner.*

88 MONDAY, *April* 19, 1880.

Met pursuant to adjournment.

Present: Mr. Hay, for Peugh; Mr. J. J. Johnson, for Porter; Mr. Ingle, for Winder; Pike, for Chiles.

Whereupon Mr. Johnson, for Porter, objects to so much of the foregoing depostion as is hearsay, irrelevant, incompetent, and argumentative, and where it undertakes to give the contents of written papers.

Examination-in-chief of SAMUEL A. PEUGH resumed as follows, to which the State Department responded. Letter from State Department offered in evidence, and marked Exhibit S. A. P., No. 4.

DEPARTMENT OF STATE,
WASHINGTON, D. C., *December* 10, 1876.

S. A. PEUGH, Esq., *Washington, D. C.*

SIR: I have to acknowledge your letter of December, 1878, referring to your communication to the Department of the 24th of Octo-

ber last concerning your relations to the claims of Messrs. Conrow, Parsons, and Standish, decided by the Joint American and Mexican Commission, and transmitting the affidavit of Mr. Rittenhouse in relation thereto.

I am, sir, your, obedient servant,

CHAS. PAYSON,
Third Assistant Secretary.

I addressed two or three communications to the State Department, to each of which it responded.

Upon the receipt of one or both I met Dr. Porter on the street, and he complained of my having addressed a communication to the State Department in regard to my claim, saying he and I could adjust that matter. I replied, it was my prerogative to take care of my own rights in my own way, and as he had attempted to complicate us in these matters, I should certainly do so; and we parted on the corner of the General Post Office, he saying it would only embarrass him.

In relation to my statement about Mr. Rittenhouse's belief as to his having returned me the contract, signed by Dr. Porter, Mr. Rittenhouse, and myself, it is corroborated by a letter which Mr. Rittenhouse addressed me on the subject, dated 1878—the month I don't remember.

In relation to my statement of the interviews we had with Dr. Porter, at Penn Clarke's office, I have a copy of the verbal agreement, reduced to writing by Penn Clarke in the presence and with the consent and agreement of Dr. Porter, but which was not executed, which Dr. Porter refused to sign, for reasons which he did not express—never did explain.

(Counsel for Porter objects to testimony as to contents of papers as given by witness, as inadmissible, and paper called for.)

(Counsel for Peugh herewith files the paper, and it is marked Exhibit S. A. P. No. 5.)

89 EXHIBIT S. A. P., No. 5.

Whereas Samuel A. Peugh and Charles E. Rittenhouse are about to institute a suit in equity in the name of said Peugh and Rittenhouse against Richard H. Porter, S. V. White, Thomas P. MacManus, R. H. Musser, and others to recover twenty-five per centum of three certain awards rendered by the Mexican Commission, severally, in favor of Mary Ann Conrow, Mildred Standish, and S. K. Parsons, the three aggregating the sum of $143,812.32, under a contract executed by said Porter to said Peugh and Rittenhouse; the object of said suit being to settle the equities of all of said parties in said awards, and to distribute the instalments now paid by Mexico on said awards, and regulate the payment of future payments on said awards; and whereas the said Porter has also an interest in the amount claimed by said Rittenhouse and Peugh, and said Rittenhouse has agreed to receive the sum of three thousand dollars, in payment of his interest in said awards; and one C. H. Winder is also

entitled to the sum of one thousand dollars out of the interest of said Peugh and Rittenhouse; and whereas the said Peugh and Rittenhouse have employed W. Penn Clarke and Jack Brown as their attorneys to prosecute said suit: Now, therefore, in consideration of the premises, it is hereby agreed by and between the said Peugh and Rittenhouse and the said Porter, as follows, to wit:

1. That out of any sum of moneys decreed to said Peugh and Rittenhouse and to said Porter in said suit, or received in compromise of said claims of Peugh and Rittenhouse or the said Porter, in settlement of their interest in said awards, there shall be paid to the said W. Penn Clarke and the said Jack Brown the sum of twelve and a half per cent. each, making together the sum of twenty-five of the amount so recovered or received.

2. That there shall be paid to the said Rittenhouse the sum of three thousand dollars.

3. That there shall be paid to the said C. H. Winder the sum of one thousand dollars.

4. That after the payment of the aforesaid sums then the balances of the fund remaining, so recovered in said suit or received in compromise, shall be equally divided between the said Samuel A. Peugh and Richard H. Porter.

5. All of said payments to be paid as follows, that is to say: Each of said parties is to receive a *pro rata* proportion of the three instalments already paid by Mexico, and now under the control of the State Department for distribution to the parties entitled thereto, and each to be entitled to receive a like *pro rata* of the future instalments as the said are paid by Mexico of said awards.

6. That this contract shall be placed in the hands of —— for safe keeping, and as the representative of all the parties interested herein, who shall be alone authorized to receive the money or representative of money paid on said awards, and whose duty it
90 shall be to pay out the same to the parties entitled thereto, or their representatives, in accordance with the terms of this agreement, and if checks are issued in payment of said awards to any of the parties named herein, it shall be the duty of said parties, or either of them, to indorse and deliver them to the said —— to enable him carry out this agreement.

In witness thereof the said parties hereto set their hands and seals this — day of —, A. D. 1879.

——— ———. [SEAL.]
——— ———. [SEAL.]
——— ———. [SEAL.]

Signed in presence of—

——— ———.

(The introduction of the paper objected by counsel for Porter, because neither Mr. Peugh, nor Penn Clarke, nor Rittenhouse had been authorized by anybody except themselves to undertake to divide the fund in question among themselves.)

(Counsel for Peugh suggests that the objection is rather in the sense of testimony, as it is a matter of proof.)

(Witness resumes.) Previous to its preparation Dr. Porter, Penn Clarke, and myself, had several interviews on the subject, and the agreement was according to the tenor of this paper. The first translations were all made by the same person, embracing, if my memory serves me right, the original memorial in manuscript, translated into Spanish, and all the evidence filed by Mexico, which was all in Spanish, translated into English. They were made by a clerk in the Treasury Department. The name I have forgotten, but I think it was Myrick, to whom I was directed by Mr. Rittenhouse, with whom he had an acquaintance, having previously procured the permission of the commission for this purpose. After the memorial was prepared we transmitted all the papers through Mr. Rittenhouse to Mr. Musser to be executed according to our instructions. Mr. Musser had them executed, and returned them to us through the same channel as he did all the papers we filed, Mr. Rittenhouse paying his part of the cost of the translations, and I mine, as we did in the advance made of $300, each one paying $150, and each one the half of all expenses incurred, briefs, and everything connected therewith, so far as my memory at present serves me.

(Counsel for Peugh signifies that the direct examination is about closed, with the exception of the filing of certified copies of certain papers in the State Department when they can be obtained.) Printed copies of memorial No. 397, in English and Spanish (marked Exhibits S. A. P. Nos. 6 and 7; No. 384, in Spanish, Exhibit S. A. P. No. 8; 385, in English, S. A. P. No. 9; 392, in Spanish, S. A. P. No. 10; brief in Exhibit S. A. P. No. 11, are filed by counsel for Peugh).

91 EXHIBIT S. A. P. No. 6.

JACKSON L. SMITH, Curator of the Estate of Kearney S. Parsons,
against
THE REPUBLIC OF MEXICO. } No. 397.

To the honorable Joint Commission of the United States of America and the Republic of Mexico:

Your memorialist, Jackson L. Smith, curator of the estate of Stephen Kearney Parsons, respectfully represents that he was duly appointed curator of the estate of said Stephen Kearney Parsons by an order of the county court of Cole county, in the State of Missouri, dated Jefferson City, December 19, 1864.

That as such curator, and in behalf of his said ward, he has a claim against the Republic of Mexico for the sum of one hundred and ten thousand dollars. That the said claim had its origin in the unlawful seizure, robbery, and killing, and torture, and maltreatment of the late Mosby Monroe Parsons, on or about the 15th day of August, A. D. 1865, at or near the San Juan river, and between the cities of Monterey and Camargo, in the Republic of Mexico, while the said M. Monroe Parsons was traveling from the said city of Monterey to the seaboard, at the city of Matamoras, for the purpose of

returning to the United States and to his home at Jefferson City, where he had his domicile, and being at the time a citizen of the United States, peaceably pursuing his journey, with the intention of returning to his own country. That the said Mosby Monroe Parsons was a native of the United States of America, born in the State of Virginia, at Charlottesville, in Albermarle county, on the 21st day of May, A. D. 1822, and was at the time of his said death in his forty-fourth year. That the said Mosby Monroe Parsons had for the thirty years preceding his death had his domicile at the city of Jefferson, in the county of Cole, in the State of Missouri, and was a citizen of said State and of the United States at the time of his death. That the said Mosby Monroe Parsons was by profession a lawyer, and engaged the greater part of his life in the practice and pursuit of his profession in the various courts of record, in the supreme court of the State of Missouri, and in the various higher courts of the United States, and as such was eminent and successful in his said profession, and had filled several stations of honor and trust, not only as such, but as a citizen, having been district attorney of the United States for the western district of Missouri, and representative from Cole county and the adjoining counties in both the House of Representatives and the Senate of the State of Missouri, and that he had served in the war with Mexico as an officer in the military service of the United States, and as a captain in the calvary command of Col. Doniphan, and was a man of education, energy, and ability as a lawyer and soldier, and of great usefulness as a citizen, both to his country and to his family.

92 That the said M. Monroe Parsons was married to the daughter of Hon. R. W. Wells, one of the judges of the circuit court of the United States for the district of Missouri, of which marriage was born the said Stephen Kearney Parsons, the ward of your memorialist, who is the only surviving child of the said marriage and who is about eighteen years of age. That the said Mosby Monroe Parsons survived his said wife several years, and was at the time of his death unmarried and a widower, and having no other children or heirs besides the said Stephen Kearney Parsons. That the said Mosby Monroe Parsons went into the Republic of Mexico from the State of Texas in the spring of the year, A. D. 1865, at which time, he, the said Mosby Monroe Parsons, was a citizen of the United States of America and the State of Missouri, having his domicile as afore stated at Jefferson City, in Cole county, in the State of Missouri, and the Republic of the United States was at that time at peace with the Republic of Mexico. That the said M. Monroe Parsons reached the city of Monterey in company with his brother-in-law, Austin M. Standish, and Aaron H. Conrow, Esquire, both citizens of the State of Missouri and of the United States of America; and a serving man, groom or servant of the said M. Monroe Parsons, a German known by the name of Dutch Bill, and others of their countrymen, citizens of the United States. That they were well equipped for the said journey through the Republic of Mexico, with Gov. horses and equipments, had with them valuable papers, money, trinkets, and apparel with which they reached the city of

Monterey about the latter part of July, A. D. 1865. That at Monterey the said Mosby Monroe Parsons, in conjunction with the said Austin M. Standish, and the said Aaron H. Conrow with other Americans, sold and disposed of many of their valuables and equipments receiving therefor a large sum of money, and with the intent of proceeding on their journey overland to Matamoras, they on or about the 12th day of August, A. D. 1865, started on horseback from the city of Monterey and while on said journey, intending to return to their own country, and being friendly to the Republic of Mexico, but participating in nowise in the hostilities then pending between the said Republic of Mexico and the French army under the command of the Archduke Maximilian, of Austria, and on the night of the second or third day of the said journey, to wit, about the 15th day of August, A. D. 1865, and whilst peaceably encamped at a water-tank near the San Juan river on the road from Monterey to Matamoras, the said M. Monroe Parsons, with his said companions and others were set upon by a party of armed Mexican soldiers, acting under the command and orders of one Col. Planton Sanchez, an officer of the army of the Republic of Mexico, and attached to the army then under the command of General Escobedo, and then and there the said Mosby M. Parsons, with his said companions were by the said armed troops of the Republic of Mexico overpowered, beaten, wounded, and maltreated, by order of the
93 said Colonel Planton Sanchez, and dragged away from the said camp toward the river San Juan, where they were cruelly tortured and murdered and robbed by order of the said Colonel Planton Sanchez and the authorities of the Republic of Mexico.

That the said Mosby Monroe Parsons had on his person at the time of his said capture and murder, as your memorialist is informed and believes, a very large sum of money in gold, to wit, about two thousand eight hundred dollars, and besides, valuable papers and personal trinklets, as also his horse, saddle, arms, and equipments, which your memorialist believes and is informed were of very great value, to wit, to the value of one thousand dollars in money. That the said claimant is a native of the United States of America, and was born in the State of Missouri on the 29th day of January, A. D. 1837, and his domicil is in the city of Jefferson, in the county of Cole, in the State of Missouri, and his said ward is a native-born citizen of the United States of America, and was born at the city of Jefferson in the State of Missouri; that the said claim is preferred by the said Jackson L. Smith, as curator aforesaid, for the benefit of his said ward.

That the entire amount of said claim does now and did at the time it had its origin belong solely and absolutely to the said Stephen Kearney Parsons, except a contingent interest given to my attorney and solicitor for this claim.

That neither this claimant, nor any other person for him, nor his said ward, have ever received any part of said claim, and the entire amount is due and owing to him as such curator of the said Stephen Kearney Parsons. That this claimant has no knowledge or information of this claim ever having been presented to the Department

of State of either government, or to the minister of the United States at Mexico, or to that of the Mexican Government at Washington. That all of the above acts of attacking, beating, maltreating, robbing, and murdering of the said M. Monroe Parsons, your memorialist is informed and believes, were committed by the Mexican authorities without any cause or provocation whatever on the part of the said M. M. Parsons, deceased.

That the said Stephen Kearney Parsons, by reason of the foregoing, to wit, the attacking, robbery, and murder and dragging of the body of his said father, the late M. M. Parsons, by the citizens and soldiers, and under and by the authority of the Government of Mexico, at the time and place mentioned in the foregoing, has been deprived of the society, support, and protection and advise of his said father, and of the education by him to be to his said son given and bestowed, according to his station in life, and is damaged in the amount and entitled thereto, claimed in the foregoing, as well for the money and property taken from the person of the said M. Mosby Parsons, in the sum of ten thousand dollars, as for the cruelties, indignities, robbery, and death inflicted on the person of his said father, in the sum of one hundred thousand dollars, for which he prays a speedy allowance.

By R. H. MUSSER,
Counsel for Plaintiff.

94 UNITED STATES OF AMERICA, *State of Missouri:*

Before me came Richard H. Musser, attorney and solicitor for the claimant, who being by me first duly sworn, on his oath states that the matter and things stated in the foregoing memorial are to the best of his information and belief true.

R. H. MUSSER.

Sworn to and subscribed before the undersigned United States commissioner for the district of Missouri, this 2d day of March, A. D. 1870.

BEN. F. HICKMAN,
U. S. Commissioner.

Exhibit S. A. P. No. 7, the same (in Spanish) as S. A. P. No. 6.

Exhibit S. A. P. No. 8, the same (in Spanish) as Exhibit S. A. P. No. 9.

Copy.

EXHIBIT S. A. P. No. 9.

MRS. SARAH MILDRED STANDISH
against
THE REPUBLIC OF MEXICO. } No. 385.

To the Honorable Joint Commission of the United States of America and the Republic of Mexico:

Your memorialist, Sarah Mildred Standish, respectfully represents that she is a widow and administratrix of the late Austin M.

Standish, deceased, and guardian of the children and heirs-at-law of the said Austin M. Standish, to which administration she has been duly appointed and qualified, by the county court of Cole county, in the State of Missouri, dated December 4, 1869, and the guardianship of said heirs, she holds as the natural right as their mother. That as such widow, such administratrix, and such guardian she has a claim against the Republic of Mexico for the sum of one hundred and ten thousand ($110,000)-dollars.

That the said claim has its origin in the unlawful seizure, killing, and robbing of the said late Austin M. Standish, on or about the 15th day of August, A. D. 1865, at or near the San Juan river, in the Republic of Mexico, and between the cities of Monterey and Comargo, while the said Austin M. Standish was traveling from the said city of Monterey toward the seaboard, at the city of Matamoras, for the purpose of returning to the United States and to his house at Jefferson City, and being at that time a citizen of the United States and peacefully pursuing his journey with the said intention of returning to his own country.

That said AustinM .Standish was a native of Ireland and a duly naturalized citizen of the United States of America, having been admitted to citizenship in accordance with the laws of the United States of America, by order of the circuit court of Cole county, in the State of Missouri, at a regular term thereof, begun and held on the 3d Monday in February, 1859, and on the 23d day of February,
at the city of Jefferson, in the said county and State; and was
95 at the time of his said unlawful killing and robbing, about
36 years of age. That the said Austin M. Standish was by profession a civil engineer, and engaged, the greater part of his life, as such in the construction of railways, and had formerly been employed as such on the Missouri Pacific railroad; that he, the said Austin M. Standish, was a man of education, skill, and ability, as also a man of energy, and capable of great usefulness to his adopted country, as well as to his country.

That the said Austin M. Standish went into the Republic of Mexico from the States of Texas in the spring of the year 1865, at which time the said Austin M. Standish was a citizen of the United States and of Missouri, having his domicile and residence in the city of Jefference, Cole county, Missouri; and the Republic of United States was at peace and friendly with the Republic of Mexico. That the said Austin M. Standish reached the city of Monterey in company with his brother-in-law, the late Gen'l M. Monroe Parsons, the late Aaron H. Conrow, Esq., and a serving man, a German, whose name is unknown, except as "Dutch Bill," and others of their countrymen; that they were equipped for their said journey through Mexico with good horses and equipments, and had with them valuable papers, money, trinkets, and apparel when they reached Monterey, about the latter part of July, 1865.

That at Monterey the said Austin M. Standish, in conjunction with the said M. M. Parsons and the said A. H. Conrow, with other Americans, sold and disposed of many of their valuables and equipments, receiving therefor a large sum of money, and with the in-

tent of proceeding on their journey overland to Matamoras they on or about the 12th day of August, A. D. 1865, started on horseback from the city of Monterey; and while on the said journey, intending to return to their own country, and being friendly to the Republic of Mexico, but participating in no wise in the hostilities then pending between the said Republic of Mexico and the French army under the Arch-Duke Maximillian of Austria; and on the night of the second or third day of their sad journey, to wit, about the 15th day of August, A. D. 1865, while encamped peaceably at a water-tank near the San Juan river, on the road from Monterey to Matamoras, the said Austin M. Standish, with his said companions and others, were set upon by a party of armed Mexicans, soldiers acting under the orders and by the authority of one Colonel Planton Sanchez, an officer of the army of the Republic of Mexico, and attached to the army then under the command of General Escobedo; and then and there the said Austin M. Standish, with his said companions, were by the said armed troops of the Republic of Mexico overpowered, beaten, wounded, and maltreated by order of the said Colonel Planton Sanchez, and dragged away from the said camp toward the river San Juan, where they were cruelly treated, tortured, and murdered by order of said Colonel Planton Sanchez and the authority of the Republic of Mexico.

96 That Austin M. Standish had on his person at the time of his capture and murder, as your memorialist is informed and believes, a large sum of money in gold, to wit, about two thousand dollars ($2,000.00), and besides valuable papers and personal trinkets, upon which your memorialist can fix no value whatever in money; as also his horse, saddle, bridle, arms, and equipments, which your memorialist believes were of very great value, to wit, to the value of five hundred dollars ($500.00).

That the said claimant is a native of the United States of America, and was born in the States of Virginia on the 14th day of September, A. D. 1833, and her domicile is in the city of Jefferson, in the county of Cole, in the State of Missouri; that she was intermarried with the said Austin M. Standish on the 10th day of March, 1857, and that her children and co-heirs of her late husband, the said Austin M. Standish, were all born in the city of Jefferson, in the State of Missouri, and are aged respectively, to wit: Richard Adolphus Standish, 12 years; Austin D'Arcy Standish, 10 years, and Monroe Parsons Standish, aged 8 years.

That said claim is preferred by the said Sarah Mildred Standish for herself as such administratrix and such guardian of her said children and co-heirs; that the entire amount of said claim does now and did at the time it had its origin belong solely and absolutely to the said Sarah Mildred Standish and her children of her said marriage with the said Austin M. Standish.

That neither this claimant nor any other claimant, nor any other person for her, nor for her children and co-heirs, has ever received any part of said claim, and the entire amount is due and owing to her as such administratrix.

That this claimant has no knowledge or information of this claim

ever having been presented to the Department of State of either government, or to the minister of the United States at Mexico, or to the minister of the Mexican Government at Washington city; and your memorialist states that all the above acts of attacking, beating, maltreating, robbing, murdering, and dragging away the body of the said Austin M. Standish were committed by the Mexican authorities, without any cause or provocation whatever, as your memorialist is informed and believes.

That the claimant, by reason of the foregoing, to wit, the attacking, robbing, and murder of her said husband, the late Austin M. Standish, at the time and place above mentioned and set out, has been deprived of the society of her husband, of his love and protection, and of the accumulative fruits, profits, and earnings of his business, and her children of the protection, advice, and support of their father, so that she is, being in indigent circumstances by reason of the said cruel and hostile acts of the authorities of the Republic of Mexico, deprived of the means of properly sup-
97 porting her said children and wards, of educating them suitable to their station in life; wherefore the said claimant is damaged and entitled to the amount claimed, as well as for the money, property, and papers taken from the person of the said Austin M. Standish, deceased, in the sum of ten thousand dollars, as also in one hundred thousand dollars ($100,000.00) for the cruelties and indignities inflicted and the murder and robbing of rhe said husband, and for which she prays a speedy allowance.

By R. H. H. MUSSER,
Counsel for Claimant.

UNITED STATES OF AMERICA, *District of Missouri:*

This day personally came before the undersigned, clerk of the district court of the United States for western district of Missouri, Mrs. Sarah Mildred Standish, who is personally well known to me, and, being by me first duly sworn, on her oath says she has read the foregoing memorial and the matters therein stated, and that the matters therein stated, as of her own knowledge, are true, and the matters therein stated, as of her information and belief, she believes to be true.

SARAH MILDRED STANDISH.

Sworn to and subscribed this 7th day of March, 1870, at Jefferson City, in the county of Cole, and State of Missouri, before me—

[SEAL.] ADAMS PEABODY,
Clerk United States District Court, Western District of Missouri.

EXHIBIT S. A. P. No. 10.

MARIA ANA CONROW, VIUDA Y GUARDIANA de Guillermo Conrow, Aaron Benjamin Conrow, Maria Ana Conrow, David Conrow. } Hijos y herederos legitimos de Aaron H. Conrow. No. 392.

CONTRA.

LA REPUBLICA DE MEJICO.

A la Honorable Comision junta de los Estados Unidos de America y de la Republica de Mejico:

Su memorialista Maria Ana Conrow respetuosamente representa; que ella es la viuda del difunto Aaron H. Conrow, y guardiana de los hijos y coherederos legitimos, del dicho Aaron H. Conrow, cual guardiania ella tiene por su derecho natural, como su madre.

Que como tal vinda y tal guardiana, ella tiene una demanda contra la republica de Mejico por la cantidad de un ciento y diez mil pesos ($110,000.00).

Que decha demanda tiene suorigin cu al ilegitimo acto de asir, matar y robas dicho difunto Aaron H. Conrow al o cerca del dia 15 de Agosto, 1865, al o cerca del rio de San Juan en la republica de Mejica, y entremedia de las cuidalles de Monterey y Cemargo, durante que el dicho Aaron H. Conrow, estaba viajando de la cirdad de Monterey para la costa de la mar, a la cirdad de Matamoros con la intencion de volver a los Estados Unidos y a su casa en el condado de Ray Missouri, siendo al tiempo un cirdadano de los Estados Unidos y persiquendo tranquilamente su jornada con la dicha intencion de volver a su pais.

98 Que el dicho Aaron H. Conrow era un cin dadano nativo de los Estados Unidos, que nacio en el condado de Warren, Ohio, el dia 9 de Junio, A. D. 1824, que tuvo su domicilio en el condado de Rey. Estado de Missouri, desde el ano 1839 hasta el ano 1860 y tenia al tiempo de su ilegitima captura del matar y robar cerca de cuarenta y un (41) anos de edad. Que el dicho Aaron H. Conrow era de profession un licenciado, y estaba empleado la mayor parte de su vida en la practica de las leyes, que tenia una larga y gananciosa practica su el condado de Ray y los condados imediatos, en el Estado de Missouri, y por varios anos era procurador de circirto para el circinto del cual el condado de Ray forma una parte.

Que el dicho Aaron H. Conrow, era un hombre de educacion y talentos, como tambien un honbre de energia, y capaz de grand utilidad tanto a su pais como a su familia.

Que el dicho Aaron H. Conrow iba a la republica de Mejico, desde el Estado de Tejas en la primavera del ano 1865 al tiempo el dicho Aaron H. Conrow era un cirdadano, de los Estados de Unidos, tiendo su dimicilio y residencia en el condado de Jefferson y Estado de Missouri y la republica de los Estados Unidos estaba en paz y amigos con la republica de Mejico. Que el dicho Aaron H. Conrow allego a la cirdad de Monterey, en compania con el difunto General M. Monroe Parsons, el difunto Austin M. Standish, y un criado, un

aleman cuyo nembre no es conocido, sino como "Dutch Bill" y ostros de sus paisanos. Que ellos estaban bien aparejados para la jornada per Mejico, con buenos caballos y aparejos y tenian con ellos, papeles de volor dinero, joyas y ropa cuando liegarona Monterey, cerca la ultima parte de Julio, 1865. Que en Monterey, el dicho Aaron H. Conrow junto con dicho M. Monroe Parsons y el dicho Austin M. Standish vendieron y dispusieron de muchos de sus articulos de valor y aparejos, recibiendo por ellos ma cantidad larga de dinero; y con la intencion de proceder con su jornada por tierra a Matamoros, ellos salieron en caballa de la cirdad de Monterey, el o cerca del dia 12 de Agosto, 1865, y durante dicha jornada con la intencion de volver a su propio pais, y estando amigos de la republica de Mejico participando de manera muguna en las hostilidades pendientes entre dicha republica de Mejico y el ejercito frances bajo el Archiduque Maximiliano de Austria, y en la noche del segundo o tercer dia de su dicha jornada i. e. cerca del dio 16 de Agosto A. D. 1865 estando encampado tranquilamente a nu ojo de agna cerca del rio de San Juan, en el camino de Monterey a Matamoros, el dicho Aaron H. Conrow, con sus dichos companeros y otros, fueron agarrados por una partido soldados armados Mejicanos, obrando bajo las ordenes y por la antoridad de un Col. Platon Sanchez, un oficial del ejercito de la republica de Mejico, pertedeciendo al tiempo al ejercito bajo las ordenes del General Escobedo, y alli y entonces el dicho Aaron H. Conrow, con sus dichos companeros, fueron predominados por dichos solcados armados de la republica de Mejico, paleados, heridos y maltradados per orden de dicho Col. Platon Sanchez, y arrastrados desde dicho encampo hasta el rio de San Juan donde fueron cruelmente atornrentados, y asasinados por orden del dicho Col. Platon Sanchez, y la autoridad de la republica de Mejico.

99 Que el dicho Aaron H. Conrow, al tiempo de su captura y de asesinato tuvo en su persona, seqiie su memorialista esta informada y crea, una cantiadd grande de duiero en oro i. e. cerca de no mil pesos ($1,000.00) afuera de papeles de valor, y joyas personales, en cuales su memorialista no puede valor alguno, como tambien su caballo, silla freno, armas y aparejo, cuales su memorialista crea eran de un valor grande i. e. al valor de ginientos pesos ($500.00).

Que la dicha demandanta es una nativa de los Estados de Unidos de America, y fue nacida en el Estado de Kentucky el dia 28, de Julio del ano 1829 y que su domicilio esta en el condado de Ray en el Estado de Missouri, y que se caso con el dicho Aaron H. Conrow el dia 17 de Mayo 1848 y que sus hijos cohererderos de su difunto marido, el dich Aaron H. Conrow todos nacieron en el condado de Ray y Estado de Missouri y tienen las signentes edades, i. e. David Conrow 21 anos, Guillermo Conrow 12 anos, Aaron B. Conrow, 11 anos, y Maria Ana Conrow 9 anos. Que dicha demanda es preferida por la dicha Maria Ana Conrow para su misma como tal viuda y tal guardiana de dichos hijos y cohederos.

Que el importe entero de dicha demanda, pertenece ahora y al tiempo que tuvo su origen pertenecia solamente y absolutamente, a

la dicha Maria Ana Conrow y sus dichos hijos de su dicho casamianto, con el dicho Aaron H. Conrow.

Que ni esta demandanta, ni otro demandante ninguno ni ostra persona por ellr, ni por sus hijos y coherederos la recibido parte alguna de dicha demanda, y que el importe total es debido y debiendo a ella como tal viudo y tal guardiana.

Que esta demandanta tiene no conocimiento o informacion, de esta demanda, habiendo sido presentado al Departamento de Estado de cualquier de los dos Gobiernos, o al ministro de los Estados Unidos en Mijico, o al ministro de la republica de Mijico en Washington.

Y su memorialista reitera; que todos los mencionados actos, de atacar, palear, maltratar, robar, asesinar y arrastrar el cuerpo de dicho Aron H. Conrow, fueron cometidos por las autoridades mejicanas, sin causa o provocacion alguna, segun su memorialista esta informada y crea.

Que la demandanta por razon de lo antedicho i. e. el atacar, robar asesinar su dicho marido, el difunto Aaron H. Conrow, al tiempo y lugar arriba mencionado y ensenado, he sido deprivada de la sociedad de su marido, de su amor y protecion, y de las acumulaciones frutas, ganancias y bienes por haber de su negocio, y sus hijos de la protecion, del consejo y suporte de su padre, asi que ella es, estando en circumstancias indigentes, por razon de dicho acto cruel y hostil de las autoridades de la republica de Mejico, deprivadah de medios para mantener propriamente sus dichos hijos y tutelas y educarlos segun su puesto en vida, por esta razon dicha demandanta esta danado y tiene derecho el importe demandado, tanto por el dinero, propriedad y papeles tomados de la persona de dicho difunto Aaron H. Conrow, en la cantidad de diez mil pesos ($10,000.00), como
100 tambien en un ciente mil pesos ($100,000.00) por las crueldades y indignidades cometidas, y el asesinato y robo de su dicho marido, y por la cual suplica una pronta permision.

Firmado: R. H. MUSSER,
Abogado de la Demandanta.

ESTADOS UNIDOS DE AMERICA, *Estados de Missouri:*

Vino ante mi, Ricardo H. Musser, abogado y procurador, para la demandanta, quien por mi debidamente jurado, bajo su juramenno, dice, que las cosas y hechos, espresados en el anterior memorial, son verdaderos segun su mejor informacion y creencia.

Jurado y suscrito ante mi el infrascrito Comisionario de los Estados Unidos por el distrito de Missouri, este dia 25 de Marzo del ano de 1870.

[SELLO OFFICIAL.] BENJ. F. HICKMAN,
U. S. Comisionario, Distrito de Missouri.

EXHIBIT S. A. P. No. 11.

(Same as C. H. W. No. 1. Print.)

Cross-examined by Mr. JOHNSON for Porter:

Q. When were you admitted a member of the bar of the supreme court of the District of Columbia?

A. Some ten or twelve years ago; I don't remember exactly.

Q. Have you been in active practice?

A. Active practice in the prosecution of claims.

Q. Why did Rittenhouse and Peugh employ Mr. Winder?

A. For reasons satisfactory to themselves of this kind. Col. Winder was a man of large experience and an able lawyer, and had leisure. We relied upon a combined ability to accomplish a result, each performing a distinct part, yet tributary to the whole.

Q. Rittenhouse, in a letter which is filed as an exhibit to his deposition, urges upon Porter in 1872 to dispose of these claims; that he, Rittenhouse, wants money, and was forced to put your paper into suit. Can you explain that?

A. He did not propose to put any paper in suit of mine that relates to this case. He did put in suit a note of $500 of mine and obtained judgment against me, and I paid the money.

Q. Don't you know the fact to be that the memorials in the three cases were prepared in St. Louis?

A. I do not know the fact, but believe to the contrary, because Mr. Winder and myself revised all the papers on file, and all that were filed that we had knowledge of, preparing them in such form as the commission under its rules required.

Q. Do you not know the further fact to be that the depositions or affidavits that were procured to be used in evidence were in the handwriting of some person other than yourself or Porter?

A. I do know that fact in some measure, because I remember some of them were in Col. Winder's handwriting.

101 Q. If you prepared the memorials, why did it become necessary to make alterations or changes in them after having been executed by the parties and returned here?

A. I have nowhere stated that we prepared the memorials, but, on the contrary, when we took hold of the cases, found the original manuscript memorials on file, but the memorials, like every other paper filed, were made the subject of our review, preparation, and judgment accordingly. In that sense I wish to be understood as preparing the memorials, if I have so stated.

Q. Whose depositions did either you individually or you and Rittenhouse collectively pay for, and how much?

A. I have nowhere stated that I paid for the preparation of any depositions.

Q. What costs incurred in these cases did you pay individually, and how much?

A. I paid costs to Ginck & Co., Powell, Ginck & Co., but I don't remember how much.

Q. Who else, and for what purpose?

A. I don't remember now, and I might just remark there that the concluding line of the contract was that Dr. Porter was to furnish us with the papers, "but the testimony produced to them by said Porter."

Q. If Porter was to produce the depositions for you, what was the necessity of any expense on your part?

A. There should not have been, but we did incur the expenses

for translation, made by the gentleman in the Treasury Department to whom I have referred.

Q. What branch of the argument or arguments did you prepare?

A. I have nowhere stated that I prepared any branch of it, but, on the contrary, have stated that I assisted Col. Winder, so far as my humble efforts were, in getting the materials in shape, and we employed him as our counsel, as hereto stated.

Q. I want to know why was it necessary for Porter, when he came to this city, and after you and Rittenhouse had employed Mr. Winder, to employ Mr. Winder, if you and Rittenhouse were carrying out the alleged contract with Porter?

A. I know nothing of Dr. Porter's views upon the subject, confining my knowledge entirely to my own duties, according to the contract, except as stated by me heretofore, to wit, that he seemed pleased with our arrangement, and, as I have since understood, made an additional one with Col. Winder.

Q. Why did he make the additional one with Col. Winder? What reason did he give, if any?

A. He never gave any reason to my knowledge; as I have already stated, I have only since learned that he had made this new arrangement.

Q. When did you learn that, and from whom?

A. The precise time I don't remember. My belief is, since the awards were made, and my belief is strengthened by Dr. Porter saying to me since the awards, two, since the awards and more, three years probably, that, as he had agreed to give Col. Winder a compensation [out] of his own pocket, I ought to bear a proportion of it.

102 Q. Do you mean to be understood as saying that you knew nothing whatever of the contract between Porter and Mr. Winder, or of his being employed by Mr. Porter previous to the awards being made?

A. I have an impression only, but it does not amount to a belief *pro* or *con*, that he had agreed to pay Col. Winder some compensation out of his own pocket, but that is a matter which I regarded as concerning himself entirely.

Q. Is the impression upon your mind derived from others, or is said recollection a deduction of your own mind as to what you thought the facts ought to be?

A. My recollection is too indistinct to state more specifically in regard to it.

Q. Is not the fact this, Mr. Winder, for some cause known to himself, refused to proceed further in the prosecution of his duties under the arrangement made with you and Rittenhouse; and in order that he should go on and complete either the briefs or his argument, Porter compelled to employ him?

(Counsel for Winder objects.)

A. My answer is, I have no knowledge on the subject.

Q. You have testified about a meeting at Penn Clarke's. Who did Penn Clarke represent, and who paid him for his services?

A. He represented Porter, Rittenhouse, and Peugh, in which contract provision was made for Col. Winder's 1,000. In that contract he was to receive a contingent fee, and as that contract was not executed there was nothing to pay.

Q. If Penn Clark was Porter's attorney, why did Porter refuse to sign a paper drawn by his counsel?

A. I have already stated that he gave no reason, and to this day I do not know his reason for it.

Q. Was the paper acceptable both to you and Rittenhouse?

A. It was.

Q. I show you a letter bearing date February 23, 1879, in the Supreme Court of the United States, addressed to Col. Charles H. Winder and signed S. A. Peugh; on the fourth page of said letter is written what purports to be a reply. Tell me in whose handwriting is the body of said letter, and whether it is your genuine signature appended to said letter, and in whose handwriting is the reply, if you know.

A. I know in whose handwriting the body of the letter is; it is that of William Blanchard; the signature is my own. The reply I believe to be in the handwriting of Mr. Charles H. Winder. (Letter is offered in evidence and marked J. J. J. No. 1.)

EXHIBIT J. J. J. No. 1.

SUPREME COURT OF THE UNITED STATES,
WASHINGTON, *February 23d*, 1879.

Col. CHARLES H. WINDER.

DEAR SIR: I write you in relation to your claim on Rittenhouse and Peugh for a contingent fee in the cases of Standish, Conrow, and Parsons against Mexico.

103 Payments by Mexico under the award have been made, but owing to the rascality of Dr. Porter in selling us all out, no fee has yet been received, and there is no chance for any unless through compromise, or through a long and expensive suit in equity, which I am unwilling and unable to undertake. I have been trying to compromise in all cases, protecting your promised fee of one thousand dollars, but have been unable as yet to succeed, although I have for the present stopped the payment of the attorney's share of the money at the State Department. Owing to the blundering of Rittenhouse in surrendering to Porter our agreement securing our fees upon the sale of his, Rittenhouse's, interest therein, it is feared there is a legal impediment to our recovering anything unless through compromises.

In view of all the circumstances, I have determined to compromise. In the compromise I have determined to make I will not be able to secure you more than five hundred dollars.

Will you please inform me by return of mail if you will take the above amount and assign all your interest in said claims. If you consent it may hasten the matter if you write a receipt in full and transmit it to some reliable party here, to be delivered upon payment of the money and advise me thereof.

Respectfully yours, S. A. PEUGH.

BALT., 24*th Feb.*, 1879.

S. A. PEUGH, Esq.

MY DEAR SIR: Yours of 23rd has this moment come to hand. I have already taken steps to protect my interest on the claims to which you refer. I have no claim against Rittenhouse and Peugh. The original understanding that I had with you for $1,000 for writing an argument was subsequently, as you know, merged in a contract with Porter for services as consul, and that relation with the cases has been recognized and confirmed by the claimants and everybody else so far as I know. I have, therefore, to request that in the compromise you say you are making, you will not include any interest I possess under any circumstances. I would sooner lose every dollar than accept so paltry a sum as you mention. I think it very likely, as you say, that the loss of your contract through Rittenhouse's blunder will throw a serious impediment in your way, which I extremely regret on your account. I have been very unwell, and as soon as I am thoroughly restored I will go over and see you. Please present my kind remembrances to Mrs. Peugh.

Y'rs truly, C. H. WINDER.

(Witness resumes.) The reference made to Col. Winder in the exhibit filed S. A. P. No. 5, to take care of the $1,000 that Peugh and Rittenhouse felt themselves under obligations to pay, occurred several months after the letter above referred to. J. J. J. No. 1, was addressed to Col. Winder.

104 Cross-examined by Mr. PIKE for Chiles:

Q. You have testified in your examination-in-chief that when Dr. Porter employed you and Mr. Rittenhouse, you made to him (Porter) an advance of $300 for the purpose of procuring testimony to sustain the said claims. Was there any written evidence of the alleged advance? If yea, in what form and tenor?

A. We paid him the money in cash, each one paying his $150. I have no memory of any written evidence of it, but I have memory of a banker by the name of Bigelow loaning me the $150 for this purpose.

Q. Is your memory sufficiently robust to enable you to recollect whether or not you testified as a witness on behalf of Dr. Porter, plaintiff in a certain cause pending in the circuit court of St. Louis county, Mo., against Mrs. Standish and Col. Musser?

A. I think it is, sir.

Q. Does it enable you to recollect that testifying as such witness you testified that said alleged loan was evidenced by a written instrument?

A. I don't remember. The written evidence I referred to may have been the note I gave to Mr. Bigelow, if I so referred; but ten years have elapsed, that makes details a matter of uncertainty.

Q. Did you not testify on that occasion that said alleged loan was evinced by a written instrument, and that it fell into the hands of Mr. Rittenhouse, and that you thought it returned to Dr. Porter?

A. I do not remember, being an immaterial matter, not likely to

have impressed my memory; the fact being that I made the advance of $150 to Dr. Porter.

Q. Was not the 23d interrogatory propounded to you in chief when you were so testifying as a witness for Dr. Porter, in these words: "Please fix the time at which Mr. Rittenhouse and yourself let Mr. Porter have $300 alleged by Mr. Rittenhouse in his direct examination," and was not your answer to said question in these words: "The 16th day of February, 1870. My memory is refreshed by production of the note itself"?

A. I have no memory whatever on the subject.

Examination adjourned to April 20, at 3 p. m.

APRIL 20, 1880.

Met pursuant to above. Present: Mr. Pike, Peugh, Johnson, Mr. Hay and Ingle, when the cross-examination was resumed, as follows:

By Mr. PIKE:

Q. Will you swear that Dr. Porter did not give his promissory note for the repayment of the $300, which you allege you and Rittenhouse advanced him, Porter?

A. I will not swear anything upon the subject. We paid him the $300—$150 each, making $300.

Q. What were the exact terms of yours and Rittenhouse's contract with Winder? Was he to do a specific piece of work for a specified sum of money, or was he to render services as you
105 and Mr. Rittenhouse should demand of him, up to final determination of these claims for the sum of $1,000 mentioned by you in your testimony-in-chief?

A. I regarded Mr. Winder's position just our own, his fees depending upon success, as ours was a contingent fee.

Q. Your answer is doubtless very intelligible to yourself, but it is not responsive to my question.

Q. Will you swear that the terms of the agreement was not that he should render services up to the final determination of the claims for the contingent fee of $1,000 you have mentioned?

A. I think I have already answered that question, that our fees depended upon success, and fees could not be without success.

Q. I have no doubt that to the fee matter both you and Mr. Winder's fee depended upon success. But what I am seeking to have the court informed about is, whether under the contract he, Winder, was obligated to serve you and Rittenhouse up to the final determination of these claims?

A. I think I have already answered that question.

Q. What did you mean when testifying in chief you said that Dr. Porter made an additional contract with Col. Winder?

A. I think I could have meant nothing but what I said.

Q. When testifying in chief you spoke of having procured what was deemed by you, Rittenhouse, and Winder as adequate testimony

to the successful prosecution of these claims; how did you procure such testimony?

A. What we regarded as adequate testimony was what mankind sitting in judgment would reasonably determine. Having had 30 years' experience myself in the prosecution of claims and Col. Winder an experienced and skilful lawyer, such as I did not pretend to be, at the bar, ought to have made his judgment at least of reasonable liability.

Q. I was not asking you for a disquisition about what was or was not adequate testimony. My question was directed to the obtaining information of what testimony you alleged you procured, and how you procured it.

A. I have already stated that Col. Winder and I judged of the character of what testimony would be necessary to establish the allegations of the memorials, and being placed in communication with Mr. Musser, as I have stated heretofore, he received and acted upon the instructions sent him thereto and returned us the testimony.

Q. You have testified in chief as to your having had translations made of Mexican documents filed in these cases; did not the commission have and keep in their employ a translator?

A. Perhaps they did, for aught I now remember, and I believe they did.

Q. You have testified in chief about having paid out moneys of your own in the prosecution of these claims; what was the sum of money you so paid out, in the aggregate, and what are the items on which such sum was paid?

106 A. I have no memorandum of the items and amounts, and now have no memory of the amounts, but as I have stated heretofore, paid for the translations of the papers, and, as my memory serves me, expenses for printing.

Q. Can you state approximately the aggregate sum of money you individually paid out in the prosecution of these claims?

A. I cannot; more than ten years has elapsed since the first expenditure.

Q. Will you swear that you paid out individually the sum of $20?

A. I will not swear to any sum after the lapse of so long a time.

Q. Testifying in chief you stated that the "evidence, briefs, and arguments which were deemed conclusive by us of all the questions involved in the case, and in relation to which no new testimony was filed, were all embraced in the papers, &c., filed on the 30th day of March, 1872;" were not the affidavits of Martin Van Merick, Benton Lothrop, and Michael Duffy all filed after the 30th day of March, 1872, and received and considered by the commission?

A. I don't know that I assume this fact postulate; I think I stated something a little different; but to answer the latter part of the question, what went before the commission, or what was considered by the commission, I have no means of knowing (the commission was a close co-operation), other than such their records exhibit.

By Mr. INGLE:

Q. You have stated that in pursuance of your agreement you and

Rittenhouse at once commenced the investigation of those cases, first procuring translations of the Spanish testimony filed by Mexico; do you mean to produce the impression that you and Rittenhouse procured those translations to be made?

A. I do, sir.

Q. You have stated that those translations were made by a clerk in the State Department, a Mr. Myrick, you believe; and you afterwards stated, "We did incur the expenses for the translation made by the gentleman in the Treasury Department to whom I have referred." It should have been the Treasury Department, and not the State Department. Do you not know that these translations were made at the public expense?

A. What may have been done as a general thing I am not prepared to admit or deny, but what we did was to procure a translation by this gentleman in Treasury Department.

Question repeated.

A. I may have known it, but if so I have forgotten it.

Q. When you say that you procured a translation from that gentleman, do you mean to say that you procured a translation to be made by him, and paid him for it?

107 A. I do.

Q. Did you ever know a Mr. Trippler who was employed by the commission to do the official translating and who was occasionally employed by claimants to do theirs?

A. I do not now remember.

Q. Did not Mr. Trippler translate the *ex-parte* affidavits of Reyes and Cruz?

A. I do not know whether he did or not.

Q. You proceed to state "we then procured copies of instructions issued by the commission," &c. What did that cost you?

A. If I remember correctly the labor of going to get them only.

Q. You proceed to state that "after having prepared the memorials they were sent to Col. Musser for execution by the claimants," &c. Who prepared them and who sent them?

A. I think I have stated that the only paper filed in the cases when we took hold of them was the written memorials. Whatever was sent out was after investigation and decision under the consideration of Mr. Winder as counsel. They were handed me and I handed them to Mr. Rittenhouse, who did all or nearly all the correspondence, to be sent to Col. Musser in St. Louis. Perhaps some were sent to Doctor Porter.

Mr. Rittenhouse to whom I refer died on Saturday last, 17th day of April last.

Cross-examined by Mr. JOHNSON:

Q. Was not the only object in getting Dr. Porter into the office of Penn Clarke, to execute the paper marked Exhibit S. A. P., No. 5, to reinvest Rittenhouse in the interest he had in 1872 relinquished and sent to Porter in these claims?

A. No, sir.

Witness desires to say—I disclaim, we got him there. It was as Dr. Porter thought in his interest to go there.

Redirect:

The meeting we had at Penn Clarke's was a business meeting. I should say the several meetings we had at Penn Clarke's, for the purpose set forth in Exhibit S. A. P., No. 5.

SAMUEL E. PEUGH.

The testimony in behalf of Samuel A. Peugh here closes.

J. C., *Examiner.*

MAY 5, 1880.

Met pursuant to notice.

Present: Miller and Lewis, for MacManus and Ingle; for Winder, Pike and Chiles; Peugh *pro se*, whereupon—

STEPHEN H. MYRICK, of lawful age, a resident of Washington, D. C., a witness produced and sworn on behalf of def't Peugh, deposes and says: I am a clerk in the Treasury Department and have been for about twelve years.

108 By Mr. PEUGH:

Q. Do you know Mr. Peugh present, one of the defendants in this cause, and if so, how long; how did you become acquainted with him?

A. I do; I have known him about ten years; made his acquaintance by his applying to me for the translations of certain papers. I remember that I went to the American and Mexican Commission to get information in regard to the papers for Mr. Peugh.

I understand the Spanish language. I made a translation of certain papers. I don't know that I can say what they were for, but I recollect that they had to do with the American and Mexican Commission. I recollect distinctly translating Spanish papers for Mr. Peugh. I do not remember the names of the cases to which these translations related. This translating was done about ten years ago.

Cross-examined by Mr. PIKE for Chiles:

I was paid about the first of the year 1871. It must have been translated before I was paid. I made no other translations for Mr. Peugh after the date of payment.

STEPHEN H. MIRICK.

Sworn to and subscribed before me this 5th day of May, 1880.

JNO. CRUIKSHANK,
Examiner in Chancery.

Mr. Peugh here offers certain papers in evidence, which he states, had been agreed at a former session of this examination, might be produced. These papers are letters from C. E. Rittenhouse, marked Exhibits S. A. P. Nos. 12, 13, 14, 15, 16, and one letter from Thos. F. Wilson, marked S. A. P., No. 17.

Mr. Pike states (1) that there was no agreement on the part of Chiles for the introduction of such papers; (2) that they are in no sense evidence, being merely private correspondence, and that Chiles' counsel in appearing here waives nothing except to permit Mr. Peugh to prove the translation of the Spanish papers referred to in the testimony of Mr. Mirrick. Mr. Peugh here announces that his testimony is closed.

J. C., *Examiner.*

EXHIBIT S. A. P. No. 12.

TUESDAY, *April* 19, '70.

DEAR SIR: I have two letters from Dr. Porter, and some testimony in Mexican case. Can you come over this morning? Am not well. If you come, please call at our b'k, and bring me over any letters; ask for the Republican, and oblige,

C. E. R.

S. A. PEUGH, Esq.

109 EXHIBIT S. A. P. No. 13.

WASHINGTON, D. C., *June* 11, 1870.

S. A. PEUGH, Esq.

D'R SIR: I send herein a paper rec'd to-day to be filed in the Mexican case. As you have absented yourself for a week or more, I have had to see Gen'l Cushing, write to Cummings and Porter respecting the Council Grove matter without consultation.

Yours, &c., C. E. RITTENHOUSE.

EXHIBIT S. A. P. No. 14.

WASHINGTON, D. C., *Nov.* 4, 1870.

DEAR SIR: Mr. Caperton will put us through on the short line. If that Bigelow note is not settled at once, when will you be ready to pay it? I do not want any judgment to be br't ag't me, and I can't plead usury to prevent it; let us have it settled. I append copy of ac't, and, as I stated, the other party must also be settled with.

Yours, &c., C. E. RITTENHOUSE.

S. A. PEUGH, Esq.

S. A. Peugh, Dr., to C. E. Rittenhouse.

1870.	
Feb'y 16. Cash from Bigelow	150 00
½ int. p'd on acc't renewal and of extra when loaned	9 30
M'ch 9. Cash to Porter	500 00
8 mos.' interest on this	40 00
Cash	5 00
	704 30

CR.

By ½ expense of Porter copies	40 00
Cash Phil.	7 50
	47 50

DR.

Also	636 80
To ½ 6 per cent. int. on $300 from 18 May, 1870	4 50
Bal. due C. E. R.	661 30

Please pay this and I will take up and return the Bigelow note and your Helmick stock ch'k.

EXHIBIT S. A. P. No. 15.

OFFICE 1422 F STREET, 19 *Dec.*, '71.

D'R SIR: I have rec'd a letter from the Council Grove att'ys reporting the result of a trial of the case. Also a statement of the Mexican claims, both of which may interest you; and if you will call here at 12 m. to-morrow I will show them and consult as to what had better be done.

Yours, &c., C. E. RITTENHOUSE.

S. A. PEUGH, Esq.

110 EXHIBIT S. A. P. No. 16.

SEPTEMBER 8TH, 1878.

DEAR SIR: I have your last of yest'y, and it seems to confirm the report that Dr. P. has rec'd those Musser letters (the last man to whom you should have given them) which you promised positively to return to me. You say if you gave, did give them to Dr. P., it was because we were fighting him agt. Musser. This is rather a lame explanation, as Dr. P. and I have had no dealings for several years, and he all this time has been agt. my interest. You have not had those letters 1 year yet; so your explanation does not fit. If you did (strange, indeed, that you cannot remember such an important act, and comparatively so recently) hand them to Dr. P., it was to subserve your own interest. You have made a great mistake, Mr. Peugh, in doing this, as Dr. P. has, as you know, sold out all his interest (ignoring yours and every one else) to White, of New York, and W. has been at the State Department lately, and came near, I am told, getting possession of the drafts. You promised me most positively to return to me those letters, and by handing them to anybody else you have placed yourself in a very unpleasant position for one who always tries to be honorable. You could not failed possibly to remember your promise to me to return the letters; and in not keeping this positive promise, and repeatedly made, you deliberately committed an act which might be plainly termed a lie. Such acts always produce very grave results and loss

of reputation. I regret much that you did not keep your promise to return [return] and not part with my property. I could not have given Dr. P. that agreement; but must have handed it to you.

Yours, &c., C. E. R.

EXHIBIT S. A. P. No. 17.

15TH APR., 1871.

MY DEAR MR. PEUGH: I received yours of the 12th with a letter from Mr. Wilson, our *counsel* at Matamoras. Thinking you might not be aware that he is now here, and will be for some time, I write to inform you. He calls here every day for letters, and will probably write to you if your letter is on business requiring attention at Matamoras.

With sincere regards, yours,

H. D. S. PRATT.

P. S.—Since I wrote the above, Mr. Wilson has called at my room and written the enclosed. He expects to leave in about a week.

DEPARTMENT OF STATE, WASHINGTON, *Apr.* 15, 1871.

S. A. PEUGH, Esq., *Washington.*

SIR: I am in receipt of your letter, inclosing the petition of Mrs. Standish, &c., and asking me to obtain some information in regard to the murder of Miles Standish and others. I will give the subject my earliest attention on my return to Matamoras.

I am, sir, your obdt. servant,

THOS. F. WILSON.

111 In the Supreme Court of the District of Columbia.

MACMANUS *vs.* WHITE *et al.* } No. 6382. Eq. Doc. 18.

At an examination held in this cause before me, an examiner in chancery, commencing January 28th, 1880, personally appeared Charles H. Winder and Richard H. Musser, on behalf of the defendant Winder, and after the witnesses were duly sworn the within depositions were written down from the statements of the witnesses, read to them, and signed by them in my presence.

JNO. CRUIKSHANK, *Examiner.*

In the Supreme Court of the District of Columbia.

MACMANUS *vs.* WHITE *et al.* } 6382. Eq. Doc. 18.

RICHARD H. MUSSER, a witness produced on the part and behalf of Charles H. Winder, one of the defendants in the case of Thomas P. MacManus *vs.* White *et al.*, and plaintiff in No. —, equity, Charles H. Winder *vs.* Richard H. Porter *et al*, being sworn deposes and says:

By Mr. INGLE:

Q. State if you have any knowledge relating to Winder's connection with the cases of Standish, Conrow, and Parsons, mentioned in these proceedings.

A. I received some letters from Winder, I think, in 1872, in which he claimed that he had prepared some briefs and arguments in the case, and that Dr. Porter had employed him for that purpose. Subsequently, along in 1876, there was a suit brought by Porter against Mrs. Standish and myself in the circuit court of St. Louis county, Missouri, in which Porter testified in his own behalf and under oath in the presence of the court. I was present at the time of his testimony, and, being a party, took notes of his statements, which I have preserved. He stated in reference to Mr. Winder that he, Porter, went to Washington in the fall of 1871 and found Winder engaged in making an argument in these cases. He, Winder, was dissatisfied, and would not go on unless there was some definite arrangement made for his fee, and that he, Porter, made an arrangement with Winder for the payment of his fee, and that he, Porter, got the argument of Winder printed in 1872. On the cross-examination Porter stated that there were two arguments of Winder filed in these cases in the year 1872, and three others filed in the years 1874 and 1875. He further stated that he had paid Winder about $300 at different times, and that Winder was to be paid 4 per cent. out of the amount awarded. He stated that his agreement with Winder was an obligation in writing.

Q. Was this evidence delivered *viva voce* or otherwise?

A. It was *ore tenus*.

Q. Did he, Porter, testify on that occasion who made all the arguments in those cases before the commission and the umpire?

A. He stated that Winder had made all the arguments.

112 Cross-examined by Mr. JOHNSON for def't Porter:

Q. Do you remember that Porter received a letter, dated December, 1870, from the secretary of the commission, informing Porter that Nos. 385 and 392 would be called for hearing at the expiration of four months from 1st November, 1870, and No. 397 at the expiration of four months from January 1, 1871, which would bring the time to the first of April, 1871?

A. No, sir; I don't know anything about it.

Q. Have you any knowledge that the commission, on the 20th January, 1872, issued an order to the effect that all claims before the commission not disposed of before the 1st of April, 1872, would be entered "heard" on that day, and the commission would proceed immediately to dispose of them?

A. No; I don't recollect anything about it. If you show me the order, or something to invite my attention, I might remember it.

Q. Were you present during the entire examination of Porter, both in chief and cross, in the suit in St. Louis; if yea, did you take down his whole deposition in writing?

A. I was present during his entire examination and cross-exam-

ination. I didn't take down the whole of his testimony. I took notes of it of such parts as I desired, especially to preserve notes of. I took down his very words and language.

Q. Have you undertaken to give in testimony here all that Porter said, or have you given such detached portions from what Porter testified as in your opinion were material points?

A. I have not undertaken to give all he said. I have undertaken to give the substance of what he did say that was material and responsive to the question asked me by Mr. Ingle.

Q. Did you have *have* an interview a short time prior to the 1st April, 1872, with Messrs. Pike and Johnson and Winder?

A. No, sir; I never saw Mr. Winder until, I think, in August, 1875.

Q. Did you write to Messrs. Pike and Johnson some time in April, 1872, that if Winder said Porter held substituted powers of attorney such substitution was a forgery, or words to that effect?

A. I don't know whether I did or not. If you could show me the letter I would remember it very well.

R. H. MUSSER.

Sworn to and subscribed before me, this 28th day of January, 1880.

JNO. CRUIKSHANK,
Examiner in Chancery.

Examination adjourned to the — day of ——, 1880.

JNO. CRUIKSHANK,
Examiner in Chancery.

113 In the Supreme Court of the District of Columbia.

MACMANUS *vs.* STANDISH *et al.* } No. 6382. Equity.

CHILES *vs.* PORTER *et al.* } No. 6703. Equity.

WINDER *vs.* STANDISH *et al.* } No. 7011. Equity.

Be it remembered that at an examination held in these causes before me, an examiner in chancery, said examination commencing on the 12th day of April, 1880, at 2.30 o'clock p. m., in pursuance of written notice given by me to counsel, personally appeared Charles H. Winder, the within-mentioned witness, in his own behalf, and after the witness was duly sworn to speak the truth, the whole truth, and nothing but the truth touching the matters in issue, the within deposition was written down by me from the statements of the witness, read to him, and signed by him in my presence.

Mr. Ingle appeared for Winder.

Mr. J. J. Johnson appeared for Porter.

Mr. T. J. Miller appeared for MacManus.
Mr. L. H. Pike appeared for Chiles.
Messrs. Bartley, Southard, and Hay appeared for Peugh.

JNO. CRUIKSHANK,
Examiner in Chancery.

In the Supreme Court of the District of Columbia.

McManus *vs.* Standish *et al.* } Eq. 6382.

Chiles *vs.* Porter *et al.* } Eq. 6703.

Porter *vs.* Winder *et al.* } Eq. 7011.

Apr. 12, '80—2:30 p. m.

Met pursuant to notice.

Present: Mr. Ingle, for Winder; Mr. Pike, for Chiles; Mr. Lewis, for MacManus; Mr. Peugh, for himself; Mr. Johnson, for Porter.

Whereupon Charles H. Winder, a resident of Baltimore, Md., plaintiff in Winder against Standish, and defendant in MacManus *vs.* White *et al.* and Chiles *vs.* Porter, being sworn, deposes and says: I do not know Sarah M. Standish personally. I think I have had no correspondence with her by letter. I don't know Mary A. Conrow personally. I have had some correspondence with her father on her behalf—Mr. David Quesenberry, I think his name is. I had that correspondence some time about March or April, 1872; April, I judge. I know Richard H. Porter, and have known him since late in 1870 or early in 1871. I know Charles E. Rittenhouse, and have known him about 20 years. I know Samuel A. Peugh, and have known him for a good many years. I can't give the exact date, but before 1870. I know Thomas P. MacManus, and have known him since 1873, I think. I don't know Mr. John Chiles personally. I have seen him casually, I think, three times, but would not recognize him if he were present now.

I do not know Stephen V. White. Never saw him. I don't know Horace B. Claflin or the other defendants composing the firm of H. B. Claflin and Co.

In the summer of 1870 I happened one day in Mr. Peugh's office in relation to other matters than this, and in the course of
114 conversation he mentioned to me that he was engaged in prosecuting certain claims before the United States and Mexican Joint Commission, to wit, the cases of Mrs. Milred Standish, Mrs. Mary Ann Conrow, and S. Kearney Parsons, for indemnification for the murder of the husbands of the two first and of the father of the latter by Mexican troops in Mexico under the command of one Planton Sanchez. He, Mr. Peugh, stated to me that

affidavits and other papers relating to these cases were on his table, and that he was anxious to have an argument prepared on the evidence, to be filed before the commission, and asked me if I would be willing to prepare such an argument, and what I would charge for doing so. After some further conversation it was agreed between us that I should prepare the argument, for which I was to receive $1,000, out of his fees, if the cases were allowed. He then exhibited to me the papers he had on his table in connection with these papers, cases consisting of memorials and affidavits of various persons. I examined those papers and found them to be in my judgment materially defective, and before the argument could be prepared I thought it better that they should be amended. I sat down at this table and wrote out three of the affidavits or more—three, certainly, eliminating from them the objectionable matter; I pointed out my objection to the memorials. The rest of the affidavits Mr. Peugh prepared, omitting the objectional matter, and transmitted them to Mr. Musser. They were returned by Mr. Musser to Mr. Peugh duly executed, and when they were to be filed it became apparent that they must be accompanied by a brief of the case. That brief I prepared, and Mr. Peugh filed it with the evidence with the commission. The matter rested there until early in 1872, when I received from the commission a notice that all cases then pending before the commission would be heard on the first day of April, 1872. I then prepared the first argument, which Mr. Peugh caused to be printed. I ought, perhaps, to say Mr. Peugh and Mr. Porter, for he was here then. I ought to have stated prior to that that when I made my arrangements with Mr. Peugh to write the argument, he informed me that Dr. R. H. Porter, who was then absent from the city, was the attorney of these complainants, and I should have stated that he, Porter, returned before I had written the argument. I had an interview with him, and told him the arrangement I had made with Mr. Peugh, but that I found my connection with the cases involved a great deal more work and more responsibility than merely the writing of that argument; that in fact, I was then, and had been, performing services before the commission, that were necessary in the prosecution of the cases, and that under the circumstances I did not consider the $1,000 that I had agreed upon, with Mr. Peugh, a sufficient compensation for the services I had rendered and the services to be rendered. After some conversation he professed to see the reasonableness of the views I presented, and entered into an agreement with me, which was formally reduced to writing in April, 1874. I don't remember the date. Whereupon I wrote the argument referred to before,
and filed it on the 30th of March, 1872. Subsequently to the
115 filing of the argument, the attorney for Mexico made a
motion to dismiss the cases, or grant further time for Mexico to produce new testimony. On the arrival of that testimony a copy of it was transmitted to me by the commission, and I thereupon prepared a second argument, reviewing the facts and the law stated by the counsel for Mexico, and accompanying were two printed affidavits (the argument was printed) of two Mexican soldiers, one

Reyes and one Cruz, on behalf of the complainants. These affidavits were ruled out by the commission, and detached from the argument, upon the ground, as I was informed at the commission, that they were received too late to be considered, but the argument was transmitted by the commission to the umpire for consideration. I received notice from the commission that the cases of Mrs. Conrow and Mrs. Standish had been transmitted to the umpire for consideration by him, the commissioners having disagreed. The commission also informed me that if I thought proper I was at liberty to address an argument upon those two cases to the umpire, which I accordingly did. This argument was in manuscript. Some time subsequently the case of Parsons was transmitted to the umpire for adjudication, the commissioners having disagreed. I received notice from the commission that if I thought proper I could file an argument with the umpire on that case, which I accordingly did, and which now is, among the records of that commission, on the files of the State Department, together with the brief and the other arguments to which I have referred. This last argument in the Parsons case was in manuscript.

To go back to March, 1872, I learned from Dr. Porter that Mr. Musser and himself had a misunderstanding as to their relative rights and positions in these cases. I am not certain that I had heard anything of these disagreements prior to the early part of 1872, say February, 1872, though it appears that it had been extended back for a year or more. Mr. Musser finally, in March, 1872, I think, employed the firm of Messrs. Pike and Johnson to represent him and these parties claimants, upon the ground that he had never substituted Dr. Porter in the powers of attorney which had been obtained from these claimants. I took no interest in this quarrel whatever, but continued to pursue my duties as counsel in these cases. I thought, however, that if those gentlemen were correctly informed as to the status of affairs they would not interfere with the cases, and with a view of informing them (Pike and Johnson) of the exact condition of these cases, a meeting was appointed at their office, and the original powers of attorney were produced with a substitution of Mr. Musser, in his own handwriting, of Dr. Porter to act in his stead. They expressed great surprise, and I had hoped that the matter was settled, but it appeared afterward that these gentlemen were not satisfied, and I was informed afterwards that my first argument on file in the commission had been signed by a member of that firm as counsel for these parties, without my knowledge, and, of course, without my consent.

116 This embraces briefly my connection with the cases up to their allowance by the umpire, Sir Edward Thornton, Envoy Extraordinary and Minister Plenipotentiary of Great Britain. I will state that subsequently to the allowance by the umpire Mexico transmitted to this Government certain instalments on the claims allowed. In the meantime, I resided in Baltimore waiting quietly to receive what I conceived to be my portion as compensation for my services. I heard that some transactions had been carried on between Dr. Porter and a Mr. White in New York, in which Dr.

Porter had assigned to Mr. White all the interest he had in these claims for $15,000. I immediately wrote to the Secretary of State asking information on that point, and he transmitted to me in brief a copy of the assignments made by Porter to White. I did not take any steps in the matter for a year or more, may be believing that there would be no controversy as to my claim, but upon being informed of the purchase by White of the claims of Messrs. Pike, Johnson, and Musser, I filed a caveat in the State Department against the payment of the money in hand until all just claims were satisfied.

Subsequently these proceedings in equity were instituted and most reluctantly I came into the general scramble.

(Paper shown to witness.)

This is the first argument I wrote on the 30th day of March, 1872, I stated in my evidence before that it was the 20th March.

(Paper marked Exhibit C. H. W. No. 1, and offered in evidence.)

EXHIBIT C. H. W. No. 1.

Review of Evidence Filed by the Mexican Government.

American and Mexican Claims Commission.

SARAH MILDRED STANDISH, MARY CONROW, and children; JACKSON L. SMITH, Curator of the Estate of S. Kearney Parsons, *vs.* THE REPUBLIC OF MEXICO. } Nos. 385, 392, and 397.

The honorable commission having decided, as we understand, to receive and consider all evidence filed by either government without regard to the form or character of it, we are precluded from excepting to that now under review offered by the Mexican Government in the above cases. The absence, however, of those formalities which are necessary to the admissibility of evidence in judicial proceedings even where the largest latitude is allowed, is a circumstance worthy of the consideration of the commission when it comes to apply (and weigh) that evidence to the issues involved in these cases, and for that reason we respectfully ask its attention to the manifest defects in this particular, without argument on that point.

It will be observed that this evidence is directed to a single point, as to whether Col. Sanchez was or was not attached to the army of General Escobedo on the 15th of August, 1865, the day on which Parsons, Standish, Conrow, and their servant were murdered and robbed. This question is wholly immaterial to the issue involved in these cases.

117 In order to understand exactly what is necessary to be rebutted to relieve the Government of Mexico from the responsibility and liability growing out of the outrage complained of, we beg leave to present, briefly and concisely, the facts upon which the cases of the complainants rest.

On or about the 15th day of August, 1865, Parsons, Standish, and Conrow and their servant, having with them a large amount of valuable property were encamped near the San Juan river, on their way from Monterey to Matamoras for the purpose of making their way via Cuba to the United States.

In the night of that day, without warning, they were attacked by a large body of Mexican soldiers, and, after a severe conflict, they were murdered, robbed, and their bodies thrown into the San Juan river.

During the night another encampment of Americans, citizens of the United States, located at a short distance from that of Parsons and his companions, was attacked by a body of Mexican soldiers (doubtless the same party), but being more numerous than the other party of Americans, they drove the Mexicans off after a short encounter. The party in this encampment distinctly heard the noise of the conflict at Parson's camp, and in the morning they went to it and found evidence of a desperate conflict. There were the bodies of several Mexican soldiers, who had been killed in the fight, lying around the encampment, but the bodies of Parsons, Standish, Conrow, and the servant could not be found, but trails along the ground to the banks of the river were discovered, as if the bodies had been dragged along and thrown into the river.

These gentlemen were determined to spare no effort to discover the fate of their countrymen, and for that purpose visited the headquarters of General Escobedo. From that officer they obtained no satisfactory information, but from all they learned at that time they believed the troops belonging to that army committed the outrage, and were commanded by Planton Sanchez. This was the general report, and was generally believed. Here the matter rested for a time; the general belief of Sanchez' guilt was all that could then be alleged.

About the middle of the year 1866 Sanchez himself raised the curtain and established for a certainty what before was only a matter of belief. This development is plainly stated in the affidavit of James M. Siler, a gentleman of education and refinement, who now enjoys the confidence of the Government of the United States, representing it in the American consulate at Santa Cruz, and who, in 1866, carried such — the outrages complained of, or have ordered them to be committed. And it is necessary to do this affirmatively, not by inference. In this connection we ask the attention of the commission to the fact that there is not one word of proof as to his whereabouts on that day and for twelve days prior to that day.

118 Before proceeding to the examination of this testimony we ask the attention of the commission to the nature of it. Much of it consists of mere letters and statements not under oath, and extremely vague and informal, and written some five or six years after the transaction occurred, a fact which ought fairly to affect the weight if not the competency of the evidence offered.

The first paper in the copy of that evidence furnished to us is one purporting, by its caption, to be issued from the War and Navy Department, but is signed by "M. Diaz, O. M. C., commandant mili-

tary of the State of Chihuahua." To whom directed does not appear, except by inference from the next paper which will be referred to in its order.

The first paper purports to be an order from some one, issued by the direction of the President of the Republic, to cease from the suit entered against C. Raphael Platon Sanchez, lieutenant colonel of infantry, for injuries which resulted in the death of Francis Fajardo, train-master of artillery, and is dated 3rd August, 1865. The second paper is a military order issued from the supreme government of the State of Chihuahua, and is signed by "F. O. de Zarate, citizen officer, charged with the despatch of the War and Navy Departments," and is dated 3rd August, 1865, from which and from the subject-matter, it may be inferred that the said Zarate is the person to whom the first paper was addressed, but it is only an inference, for like the first paper, credentials with him to Mexico as induced the authorities to appoint him a captain in the legion of honor in the army of the Republic of Mexico. This gentleman's testimony cannot be successfully assailed. The statement of Sanchez, as detailed in Mr. Siler's affidavit, was voluntarily made. It is quite evident that he (Sanchez) thought the act never would be questioned—that the pretense that the murdered persons were spies of the Arch-Duke Maximillian would be a sufficient justification, if he were ever called to account for the transaction.

This is the case of the complainants, and the only possible mode of successfully rebutting it is to prove that Sanchez was at some other place on the 15th of August, 1865, than the spot where the murder was committed, and that therefore he could not have been guilty of it. Now does the evidence filed by Mexico prove this; and is it a matter of the least importance when Sanchez joined the army of the North? If he was not then attached to the army of the North, then Clark and the other witnesses who testify to that fact were misinformed, and that is all there is of that.

We will now ask attention to that evidence in detail. It will be observed that there is no attempt to deny that Sanchez did make the communications to Mr. Siler, set forth in his affidavit. Neither is Mr. Siler's credibility in the least degree impugned. It must, therefore, be assumed that Sanchez did make the statements referred to, and the attempt of the Mexican Government now is to convince this commission that he did not tell the truth. But in this effort they have failed to do the only thing that could be done to establish that fact, namely, that he was not at that point at the time
119 alleged, and could not have committed it is addressed to no one. The substance of the order is as follows: "I have received your official note of this date, the suit entered against C. Lieut. Col. Raphael Platon Sanchez for injuries resulting to train-master Francisco Fajardo, and it has been arranged in accordance with the supreme will which you communicated to me in the same note."

Now, for what purpose was this evidence introduced? Is there the remotest relevancy to the cases at bar? Does it prove anything except that Col. Sanchez was a man of violence and bloodshed?

Why this suit was "ceased from," in the language of the note, does not appear, but it does appear that Sanchez was a lieutenant colonel of infantry, and the victim an humble train-master. There is not even room for inference that Sanchez was present when this discontinuance was ordered and carried out; indeed, from the extraordinary summary proceeding in the case of homicide, and that the whole process was executed by two officers who had no judicial functions, and in "conformity with the supreme will," the presumption is that Sanchez was not present—certainly there could have been no necessity for his presence. We submit that these papers have no bearing whatever upon this case, except so far as they show that Sanchez might be just the man to commit the outrages complained of at bar.

The third paper purports to be a letter written by General Escobedo, not dated, but the following attestation at the bottom of the letter fixes the date to be 31st October, 1870. It is in these words: "I add this to you (to whom does not appear) as a result of his official correspondence, dated 31st October, 1870;" this is signed "Mejia C., minister of correspondence, present." General Escobedo, in another letter, the fourth paper in the series, says that his first letter was dated on the "14th of November last," which we presume was 1870. This is a small discrepancy, but how does it occur? We refer to it only as another fact demonstrating the looseness and informality of all this evidence, and of the little weight to which it is entitled.

The substance of the letter referred to is as follows:

"I have the honor to declare to you that Col. C. Platon Sanchez did not serve under my orders, nor was he in the State of Nevada Leon in the month of August, 1865. Moreover, if any assassinations were committed at the time, as Sarah Mildred Standish asserts, &c., they could not have been perpetrated by forces under the command of Col. C. Planton Sanchez." Now we affirm that there is but one single circumstance in this statement which General Escobedo could know as a fact, and to which he was competent to testify, and that circumstance is that Sanchez did not serve under his orders in 1865. But how can he pretend to declare that Saunchez was not in the State of Nueva Leon in the month of August, 1865, and what does his assertion that the assassinations could not have been perpetrated by forces under the command of Sanchez amount to? Did General Escobedo know Sanchez was in some other place during the whole month of August? If he did, why did he not
120 state the place or places at which he was present? Direct reliable testimony on that point would have concluded the case and saved the necessity of transmitting to this commission such a mass of inconclusive and irrelevant matter. Is it not as easy for any one else to assert that Saunchez was in Nueva Leon in August, 1865, and that the murder was perpetrated by his order? And we maintain that if the cases rested on such assertions, the commission would have a right to give greater weight to the affirmative assertion, provided the witness was entirely credible.

In the cases at bar, against this mere assertion of General Escobedo,

we have a concurrence of circumstances that are overwhelming. First the undeniable fact that the murder was committed by Mexican soldiers, because the bodies of those who fell in the conflict established this fact. The testimony of Clark and others shows that an attempt was made on their camp by a body of Mexican soldiers very shortly before (on the same night) the assault was made upon Parson's party. Then the concurrent general belief in that part of the country, that Sanchez was the man who commanded the party, and finally Sanchiz's own voluntary admission that he was the man, and justified it on the ground that they were spies. Is the bold, naked desertion of General Escobedo to override this cumulative, conclusive proof?

The fourth paper is another letter purporting to be from General Escobedo, and is liable to all the objections that belong to the first, and is indeed but a mere repetition, with this noticeable difference, whereas in the first letter he seems to doubt whether there were any assassinations at all, for he says, "if any assassinations, &c.;" in the second he speaks of them as a fact, and admits that there were reports that the forces under Sanchez did commit them. This admission is significant, and corroborates the testimony of Clark and Siler. In this letter also, he says that Sanchez chief and (we suppose by implication) Sanchez himself did not join his army till January, 1867. And here we ask the attention to the fact that T. Eluthero Gonzales and V. L. Villareal in their statements say that Sanchez came into the service of the army of the North in December, 1865, or the beginning of 1866. We refer to this great discrepancy of one year to show how utterly unreliable are the recollections of these witnesses after a lapse of five or six years. We do not consider it at all important whether he belonged to that army, and if it were important is it not inconceivable that the archives of Mexico does not contain the record of a specific order assigning him that duty."

And is it not remarkable that the Government of Mexico should have to resort to the recollection of individuals, even though they be generals, to establish a fact of which the government alone ought to be the correct source of information? While commenting upon the statement of Gonzales and Villareal we beg to call attention to the
121 significant language used in the opening of it. They say "The government has exact information of the offense of which those persons complain * * * and is able to verify the fact that at the time mentioned the deceased Col. Don Planton Sanchez was not in the service — army of the North, nor was he in, nor did he command any force in all the extent of territory from this city (Monterey) to that of Matamoras." This statement is so remarkable that it creates an impression that it is made to mislead.

If the government had the "exact information" they speak of, why did it not conclude these cases by disclosing it? Justice, honor, good faith, and humanity demanded it, and not being done we are lead irresistibly to conclude that the "exact information" was very damaging to Col. Sanchez. It is possible that Col. Sanchez was not at that time attached to the army of the North. It is also possible that he may not have had command of any military forces

engaged in legitimate military operations in that part of the country; but that on the 15th of August, 1865, he was at the head of a marauding party, and murdered Parsons and his party, we think, is clear; and the inconclusive and disingenuous character of this rebutting proof, in the face of their assertion that they have "exact information" in relation to the murder, and yet decline to produce it, serves only to strengthen and confirm the weight of our testimony.

The only other witnesses whose evidence is produced by the Government of Mexico are Com. Pedro H. Gomez, Marcos Santos Coy, and General Geromino Trevino, whose statements are of the same vague and uncertain character. Gomez states that he "was in the division of cavalry of the army of the North, and that he never received notice that Col. Planton Sanchez had been incorporated in that body until the beginning of 1867; that he was not in the army of the North in 1865, nor could he have commanded that portion of the troops to which the assassination referred to is attributed."

The assassination is attributed to Mexican soldiers, and it would have been more to the point if Gomez had stated how he came to know Sanchez did not command them. It matters not whether these soldiers belonged to the army of the North. If Sanchez was not known by Gomez to have been attached to that army until he, Gomez, received notice of that fact, how does he know that he was not attached to it before he received that notice, for it is upon the notice alone that he bases his knowledge, and he pretends to give no other source of knowledge? Marcos Coy is, if possible, still more indefinite. He says: "He was a captain in charge of a detail of a battalion of the army of the North, and that Planton Sanchez was not in that year in the region from that place to Matamoras, nor does he know that he was in any service in the army of the North." From what place to Matamoras does he refer to; and if he did not know whether Sanchez was in any service in the army of the North, how can he say that he was not in that region?

122 Trevino simply states that Sanchez performed no service in the army of the North until 1867.

Now, to all this negative testimony we answer that Sanchez himself states unequivocally that he was in that region on the 15th of August, 1865, and actually did perpetrate the crime with which he is charged, and his direct admissions can only be rebutted by positive proof that he was on that day at some other place, which would have rendered the commission of this crime by him impossible. It is manifest that if we had had the privilege of cross-examining these witnesses it would appear that they are aware that Sanchez had command of a party of Mexican soldiers, whether of the army of the North is unimportant, and if they did not personally know the fact, they had every reason to believe he was in command of the very party who committed the outrage complained of. Among the evidence filed are two commissary muster rolls, purporting to be for the months of July and August, 1865, and as these are the only proofs attempting to account for Sanchez's whereabouts in those months, they deserve special notice.

It will be observed that these two rolls are the only ones that appear not to have reached the proper department in due course. It is not pretended that they were forwarded until the 16th of January, 1871—nearly six years after they were made out—and they appear to have miscarried, for duplicate copies were sent on demand from the department on the 12th of February, 1871, for the purpose, doubtless, of being used in these cases. They are called the commissary muster rolls for the months of July and August, 1865. This is impossible, for the first is dated July 5th, 1865, and the second the 3d August, 1865, which conclusively shows that they must have been respectively for the months of June and July, 1865. How could the roll for the month of July be made up on the 5th of that month, and that for the month of August on the 3d of August? It would perhaps have been more to the purpose if they had produced the roll that was made up early in September, which would have been for August, to which, doubtless, the certificate of Jose Ma. Verdin as to the presence of Sanchez would have been found wanting. But waiving all these circumstances, and accord to these rolls all that is asked for them, and let us see how much they prove. To that purporting to be for the month of August we find this certificate by the said Jose Ma. Verdin, under date of 3d August, 1865: "I certify that to-day there have presented themselves on commissary review the citizen chiefs, the officers, and troops to whom reference is made in this and the four former lists, rubricated by me conformably to the former notes.—Chihuahua, 3d August, 1865." In this list appears the name of Rafael P. Sanchez, so that all that can by possibility be claimed for this proof is that Sanchez was then present on the 3d day of August, 1865. The pregnant question arises, Where was he between that date and the 15th day of August, 1865, an interval of twelve days? Upon this all-important question the evidence produced is as silent as the grave. Sanchez himself has answered it, and not a doubt can exist that he was marauding on the banks of the San Juan river.

123 We believe it is a universal practice in all armies to consider officers constructively present at a commissary muster who belong to a command, although they may be absent at the time on duty. This must be so, for it is certain that in time of war particularly officers are often on such duty as to preclude the possibility of their being personally present; and in the case of troops their numbers preclude their being personally present, and they are therefore considered as constructively so.

The vague negative statements about his service in the army of the North, and that he could not have commanded troops belonging to that army, are simply attempts to take advantage of the averment by some of the witnesses that Sanchez belonged to the army of the North, and thus shield the Government of Mexico from the consequences of the acts of one of its military officers of high rank acting under the authority of the Republic of Mexico.

We have proved by the best and strongest evidence our case. The credibility of our witnesses has not been impeached. The only point made by the Government of Mexico is that Sanchez was not

attached to the army of the North in 1865, and from that fact the witnesses argue that Sanchez was not in that part of the country, and did not commit the acts complained of; that the assassinations could not have been committed by the troops to whom they are attributed, meaning troops of Escobedo's army.

Now, concede all the facts claimed for this testimony, namely, that Sanchez did not belong to Escobedo's army in that year; that the troops which committed the murders did not belong to that army, and that Sanchez was present at the commissary muster on 3rd August, 1865 (but which is by no means certain), and this embraces every fact, or what purports to be a fact, in this evidence, does it in any degree touch the admissions of Sanchez? Is there anything in the case presented by the Mexican Government inconsistent with Sanchez's guilt? Clearly not, and we do not doubt for a moment the commission will so decide.

We desire to invoke the attention of the commission as to the character and standing of Parsons, Standish, and Conrow. Two of them were lawyers of eminence, and the other was a civil engineer, at the head of his profession. All of them were in lucrative practice, producing an income sufficient to maintain their families in positions of the highest respectability, and to give their children liberal educations to fit them for the highest professions. They were all married and all had children. Of course, no indemnity that the commission can award can make reparation to the widows and children for the loss of their parent and husband, cut off so cruelly. To them the loss is irreparable. Nothing can restore to the widow the tender, cherishing care of a husband, or to the children the tenderness, anxiety, and wisdom of a father in training them to become useful members in society. But the commission can in some degree indemnify them for the loss of the means of maintenance, and in measuring the amount we submit that the sum claimed in each case is extremely reasonable, and would not at a moderate rate of interest yield an annual sum anything like equal the income resulting from their several professions.

124 If the commission shall be satisfied that the evidence establishes the fact that the outrages complained of were committed by Col. Platon Sanchez and the troops under his command, it cannot for a moment doubt that the Government of Mexico is responsible for his acts under the convention creating the commission. We do not think it necessary to occupy the time of the commission with any argument on this point. The fact that Col. P. Sanchez had a commission in the Army of the Republic and was in the field acting under its authority, is admitted and affirmed by their testimony; and we prove the further fact that he held the more confidential positions of private secretary and adjutant general to General Canales, commanding the Army of the Republic.

We respectfully submit these cases to the commission, in the full confidence that it will decide them in accordance with the principles of justice and equity.

We herewith file the copy of the Mexican evidence received by us

from the commission, in order that it may be seen that we have quoted the testimony in its full force, as presented to us.

R. H. PORTER,
Attorney for Plaintiffs.
CHARLES H. WINDER,
S. A. PEUGH,
Of Counsel.

Nos. 385, 392, 397.

We respectfully ask leave to file the following papers and the observations on them, with our final argument, and to solicit the attention of the commission to them:

First. A certificate of the State Department of the United States, as to the character, standing, and intelligence of James W. Siler, one of the witnesses on behalf of the complainants.

Second. Is a copy of a letter from the consul of the United States, dated 21st October, 1869, addressed to A. Urbahn, New York city, and also an original letter from the same consul addressed to R. H. Musser, St. Louis, Mo., dated 18th April, 1870, verifying the copy to Mr. Urbahn.

In reference to these papers we beg to submit the following observations:

The Mexican Government has not attempted to impeach the credibility of M. Siler. The fact stated in his evidence, namely, that Col. Sanchez did make the admissions to him therein detailed, must, therefore, by all rules of evidence, be taken as a conceded fact in these cases. It is, therefore, quite unnecessary to offer evidence to sustain his character for truthfulness. But besides testifying to these admissions on the part of Sanchez, Mr. Siler also testifies to the result of his own observations, and inquires on the spot where the murder was committed, and in the region thereabouts, we deem it proper to show the commission that besides being a man of truthfulness and integrity, he is also a man of intelligence and education.

125 The facts testified to by him are as follows:

1st. That Mr. Siler served in the army of the Republic of Mexico in 1866, in an honorable and responsible position.

2d. That during that year he, in the course of the execution of his duty, visited the spot where the murder was committed; that his attention was directed to the circumstance by a cross which had been erected to mark the spot.

3d. That he made enquiries in relation to that transaction and learned that it was the general report and belief that the murders were committed by Mexican soldiers of the Liberal army, and that those soldiers were commanded by Col. Sanchez.

4th. That subsequently he became acquainted with Col. Sanchez, who was serving in the same corps; that Sanchez held the confidential and responsible positions of private secretary and adjutant general to Gen. Canales commanding; that these positions made him, Sanchez, executive officer of the corps.

5th. That he, Sanchez, in conversation with him, admitted that it was he who commanded the troops which committed the outrages complained of, and that Parsons, Conrow, and Standish were put to death by his order; that he, Sanchez, produced a watch which he admitted was plundered from the murdered men, and that it was part of his booty; that he often heard Sanchez, when under the influence of liquor, boast of having committed the deed, and exhibited the watch as a trophy; that he attempted to justify the act under the pretext that the murdered men were spies of the Arch-Duke Maximilian of Austria. Against this array of facts not a particle of evidence is adduced by the Mexican Government. Taking advantage of the statement on the part of the complainants that Sanchez belonged to Escobedo's army, all the evidence is directed to rebut that statement, and so by implication lead to the belief that Sanchez could not have been in that region and could not have committed the crimes charged against him. In this indirect way an attempt is made to contradict, not Siler, but Sanchez himself, who states that he did commit the act, and therefore was in that region; and the fact that he was serving on that line in May, 1866, shows conclusively that Escobedo and the other witness were mistaken in fixing the date in 1867.

If it were at all material whether Sanchez belonged to Escobedo's army or not, we think that the evidence in question establishes nothing, it is quite evident that a clear discrepancy of one year in the statement of the witnesses renders it altogether unreliable. But is it conceivable that Col. Sanchez could have been so utterly debased and lost to all sense of decency and honor as to have boasted of having committed such acts if he had not been the person? Is it not charitable to believe he had some crude suspicions that these gentlemen were spies? A colonel of infantry, the trusted and confidential private secretary and adjutant general to the commanding general of a corps or a division, to boast of having committed murders and robbery of which he is innocent, is utterly incredible.

126 In view of all the facts of the case, we submit that the Mexican testimony for the purpose for which it is offered, or for any purpose in connection with these cases, is utterly valueless. The consul's letters are valuable as furnishing corroborative proof of Mr. Siler's statements in relation to general belief, and giving force and significance to the admissions of Sanchez.

He says:

1st. That it was well known in Monterey, the gentlemen referred to were murdered near *China* in 1865, and there was no doubt the crime was committed by officers and soldiers of the liberal army.

2d. That General Parsons had, just before leaving Monterey, $5,000 in gold, and Conrow had [a] draft on England for a considerable amount. That these drafts were presented for payment and refused.

That Parsons had also several valuable horses and a vehicle which were taken by the murderers. That there were persons in Monterey who believed that the money, &c., was used by the officers of the army.

3d. That these gentlemen were peaceful travellers through the Mexican territory.

4th. He also states the significant fact that these murders were committed within the lines of the liberal army, and for that reason direct and positive proof of the facts could not be obtained in Monterey, which was in possession of Maximilian's troops.

The fact that the murders were committed within the lines of the liberal army, shows the disingenuousness of the testimony offered by Mexico. What troops held these lines? Was not Canales operating on these lines, and was not Sanchez serving there? In view of all these facts, what becomes of the loose, vague, and inconclusive statements, of Escobedo, Gomez, Coz Trevino, Villarael and the rest, that Sanchez was not and could not have been in their region, and therefore could not have committed the acts complained of. We submit that the statements of the consul, taken in connection with our evidence and especially in the light of Sanchez' admissions cannot leave a doubt on the minds of the commission. These papers came to us after we had printed our argument, and we therefore beg to submit them alonn with it.

R. H. PORTER,
Att'y for Claimants.
C. H. WINDER,
S. A. PEUGH,
Of Counsel.

Attached to this is a supplemental argument upon papers that were received after the body of it went to press.

The arguments were written, from beginning to end, by myself, in my own handwriting, and with the help of nobody. Messrs. R. H. Porter and Peugh were present. Either they signed at my request, or I signed their names at their request. I forget which.

(Paper shown to witness.)

This is the second argument I prepared upon the additional testimony produced by Mexico, and in answer to the argument of counsel for Mexico. This argument I have already referred to in my answer.

127 (Paper offered in evidence, and marked C. H. W. No. 2*a*.)

C. H. W. No. 2*a*.

Before the Hon. the Joint American and Mexican Claims Commission.

SARAH MILDRED STANDISH, MARY CONROW and Children, S. KEARNEY PARSONS. Nos. 385, 392, 397.

I had the honor to present to the honorable commission heretofore an argument upon the facts in the above cases, to which I respectfully refer. Since then new testimony on behalf of the complainants has been filed, upon which, and upon an argument filed by the

Mexican attorney, I beg leave, very respectfully, to submit a few observations.

But for the fact that the additional testimony filed in the cases by complainants is sufficiently important to justify me in troubling the commission with some comments, I would be content that they should be submitted without any reference to the paper submitted by Senor Arita, being perfectly assured the material errors of law and of facts would not escape the attention of the commission.

First, in reference to the witness Siler, who the learned attorney styles the champion and friend of the complainants. Whence he derives this impression, he does not state; but the fact is that Mr. Siler never saw either of the murdered men, or any member of their families, in his life. His testimony was sought by the friends of the families, and it was given frankly and honestly in the case of truth and justice, and I submit that it is the extreme of prurient sentimentality to imagine that it ought not to be considered because Col. Sanchez is dead. The question, and the only question, to be considered by the commission is, whether taking that testimony, with all the surrounding circumstances, and in connection with the other evidence in the cause, it is entitled to credit.

I think I will show that Mr. Siler is so completely corroborated by other witnesses as not to leave the shadow of a doubt, not only that Sanchez was under General Escobedo's command, but that he, and the Mexican soldiers he commanded, are guilty of the murder of Conrow, Standish, and Parsons, as charged in the memorial of the complainants; and I submit, without the fear of successful contradiction, that the commission is bound to take his testimony as it stands as true, unless its credibility is successfully assailed and impeached by a process more tangible than the gratuitous assertion of counsel.

Before, however, I proceed to show the consistency and concurrence of the testimony offered, I beg leave to dispose of an extraordinary proposition of law by the Mexican counsel. I quote his words:

"Suppose it be true that soldiers of the Mexican army, under the command of any chief whomsoever, did commit the murders referred to, would this (Mexican) Republic be responsible only because the authors of it were in said republic's service? Can it be that the servants of a government can only commit a crime as such servants, and not as private persons?"

128 Now, I submit, that every officer of a government is a part and parcel of that government. A government is a system for the control of a nation and for the regulation of the affairs and protection of its subjects. It consists of a system of laws, and of officers to enforce and carry them out, so that every officer is as much a part of the government as any other part of its machinery, and it is because of this fact that every officer of a government is presumed to be acting in the line of his duty when he is on duty, until the contrary is distinctly shown.

Colonel Sanchez was as much the government of Mexico in his official sphere as President Juarez was in his, and although such a

thing, whatever it may be, as a "supreme government" and "supreme will" seems to be recognized in Mexico, but in acceptation of international law, no such thing can be recognized when an officer of that government violates treaty obligations by which his government is bound.

When, therefore, Planton Sanchez as a colonel or lieutenant colonel in the Mexican army with a detachment of that army, kills American citizens, who are on the soil of Mexico, in conformity with treaty stipulations, and are under the protection, therefore, of the Mexican government, it is murder, and nothing but murder, and the Mexican government is responsible for the act.

It may disavow the act and punish the offender, but that does not release it from the obligation of reparation.

Senor Arita takes exceptions to the terms with which this crime was characterized in the memorials; he thinks the "picture of horror too highly colored." This is only a matter of taste; but I take it, the general opinion of mankind will concur that the butchery and robbery of three men by a large detachment of soldiers, led on by a colonel, can hardly be overdrawn.

I hardly think it necessary to advert to inquiry of the learned counsel as to why these women and children did not proceed to Mexico to bring these murderers to justice before a competent tribunal there. The very statement answers itself, the inconceivable folly of such an attempt on their part is so manifest.

In this connection I may as well advert to the other kindred remark of the counsel, namely, that these petitioners don't want the punishment of the murderers, but money!!! It is hard to conceive the nature of the sentiment that gave birth to that thought; most certainly it is not to be envied. Here are three husbands and fathers suddenly cut off, leaving their families unprotected, and without the means of maintenance.

They are all three at the head of their professions, from which they derived incomes large enough to support them in comfort, and to educate their children to future usefulness. Now, while no amount of money could compensate these widows and children for the terrible calamity that had overtaken them, is there a man who will say that it is not eminently just and proper to indemnify them for the loss of their maintenance and support? If there be such a man
129 he would not be fit to determine these cases. Now with regard to the evidence filed, it is not necessary to go over the ground covered by my former paper. I said then, that all the testimony adduced to show that Sanchez was not near the scene of murder and did not belong to Escobedo's army was vague and inconclusive, which is now established beyond all controversy by the evidence now filed.

Let me briefly collate the evidence of this question, so that the hon. the commission may see at a glance the whole ground. The complainants allege that Conrow, Standish, and Parsons were murdered and robbed on the night of the 15th August, 1865, near the San Juan river, and that the murder was committed by a detachment of soldiers of the Mexican Republic, under the command of

Colonel or Lieutenant Colonel Planton Sanchez. In support of this charge we have adduced the testimony of—

1. John B. Clark, who had travelled from Monterey with the three murdered men, and had encamped with his companions not far from the spot where Parsons and his companions were encamped. Clark says that during the night his camp was attacked by a band of Mexican soldiers and, after a brief fight, the soldiers were driven off. Some time after, on the same night, he heard, in the direction of Parson's camp, a heavy firing, as if a fight were going on. The next morning, feeling uneasy about his countrymen, Clark, with some of his companions, went over to Parson's camp and there found the evidences of a desperate conflict. There lay the dead bodies of several Mexican soldiers. They did not, however, find the bodies of Parsons, Conrow, and Standish, but they discovered a trail to the river, as if the bodies had been dragged there and thrown in.

On the next day Clark went to General Escobedo's headquarters to make inquiry as to their fate, but could get no definite information; but, from all they could learn, he believed that the murder was committed by a band of Mexican soldiers under the command of Planton Sanchez. Indeed the fact that they were Mexican soldiers was demonstrated by the bodies that were left dead on the field of conflict.

2. James Siler's affidavit as to the admission of Sanchez himself. If Sanchez did make the statements as set forth in that affidavit, I submit that the case is absolutely concluded. Now, who is Mr. Siler? So far as education, cultivation, and integrity are concerned, he is a gentleman. During our late civil war he served with distinction as an officer in the United States army, and he achieved a creditable record. After the close of the war, impelled by a generous feeling in behalf of the Republic of Mexico, struggling, as he believed, for national existence, he proceeded to Mexico, bearing with him such attestations of his character that upon offering his services he was commissioned as a captain in the Legion of Honor, and upon the closing of that struggle by the defeat and death of the Archduke Maximilian he returned to the United States and established
130 a newspaper in Arkansas, and the ability with which it was conducted evinced a high order of intellectual capacity, and the Government, in recognition of his merits and the confidence it reposed in him, appointed to a consulate abroad. He never knew either of the parties who were slain, or any members of their families, and never saw one of them. He has no interest, directly or indirectly, in these claims or their results, and, in fact, never knew of their existence until he was called upon to testify. This he has done frankly and honestly, and the commission is bound to accept his testimony as true, unless his character for truth and veracity shall be impeached by a more formal and direct process than the mere innuendo of counsel, and when that shall be attempted we are prepared to refute it by numbers of witnesses of national reputation for honor, integrity, and patriotism. Can a doubt exist in the minds of the commission that Sanchez made the declarations to Siler to which he has testified?

Is it not manifest, beyond all possible doubt, that Sanchez was not personally present at the proceedings in Chihuahau on the dismissal of the suit against him for the homicide of the train master? In fact, it is not alleged by the testimony of the Government of Mexico that he was present. And is it not also perfectly clear that he was not personally present as indicated on the commissary rolls but only constructively so? And it is equally manifest that General Escobedo was mistaken in the vague assertions in his two letters filed in these cases. In fact, he is flatly contradicted by the evidence for the defence, for whereas he fixes the date of Sanchez joining his army in January, 1867, Gonzales and Villareal state distinctly that he joined that army in December, 1865, a discrepancy of over a year, showing beyond all question that no reliance can be placed upon the accuracy or recollection of General Escobedo.

It does seem to me that if the cases rested here the commission would be bound to enter a decree of indemnity against the Mexican Government. But there are other witnesses whose testimony give special and striking significancy to Siler's statements which must forever close the lips of cavil.

We now invite the attention of the commission to the affidavits of Florencio Cruz and Crecencio Reyes, herewith filed. They settle beyond all possible doubt the facts that Planton Sanchez was attached to the army of Escobedo in August, 1865, and that Conrow, Standish, and Parsons were murdered by his command and by his order.

There are then five witnesses entirely independent of each other, their testimony taken apart at different times and places, and unknown to each other, with the exception of Cruz and Reyes, who concur exactly as to the facts of these cases. They are Siler—or rather Sanches himself—Colonel Thomas P. McManus, Mitchell Duffy, Cruz, and Crecencio. Colonel McManus was an officer of the United States and an ardent friend of Mexico, well known to the officers of the Mexican army and enjoyed their confidence. He was at the time to which he refers engaged in the most confidential duties, and he had ample opportunities of ascertain-
131 ing very accurately the facts of these cases as they were understood by those who had every opportunity of knowing, particularly from the half-brother of Col. Sanchez himself, who was most explicit in his declaration that Sanchez did actually order the killing of these unfortunate men. In the light of all this testimony how pregnant was the conviction at which Clark arrived on the day after the murder, on the occasion of his visit to Escobedo's quarters.

We do not doubt that this evidence will carry conviction to the minds of the commission, and it only remains for us to submit a few observations on the law of the cases, and the measure of indemnity which we conceive to be just.

It will not be denied that American citizens in the lawful pursuit of business or pleasure have a right, under treaty stipulations, to visit the Republic of Mexico, and that so long as they conduct themselves in obedience to the laws of the Republic they are entitled to the protection of the government. And we state as a corollary to

that proposition that if an American citizen is injured in his person or property by an official of that government in the pretended discharge of his duties, it is a tort for which the government is responsible. This is the only possible remedy that can be had. The suggestion of counsel that the tribunals of a country are opened to the injured parties scarcely deserves notice. It certainly would be the duty of the Government to vindicate its own outraged dignity by punishing the offenders.

We claim, therefore, that in the cases at bar, the government of Mexico is answerable to these petitioners in indemnity, and the only question is, what ought to be the measure?

We have before stated that Parsons and Mr. Conrow were lawyers, and Mr. Standish was a civil engineer, and each stood at the head of his profession, and earned an income of at least $6,000 per annum, and their families were maintained in elegant comfort, and their children were being educated at the best seminaries. By their deaths their families were suddenly cut off and left in comparative proverty. Besides, these gentleman had property to a considerable amount, in gold, horses and wagons, at the time of their murder. We submit that an amount equal to a capital which, at six per cent., would produce $6,000 per annum would be a reasonable indemnity, if the commission shall conclude that we have established our cases.

We have printed the testimony of Cruz and Crecencio for convenience, and regret that when we filed our former agreement we had not copies of the affidavits then filed that we might have printed them also.

R. H. PORTER,
Attorneys for Claimants.
C. H. WINDER,
Of Counsel.

This was entirely my own production, and it is signed "R. H. Porter, attorney for claimants; Charles H. Winder, of counsel." It was signed in my office. It was either signed by him, or by me for him at his request. He never saw it until after it was finished.

132 (Paper shown to witness.)

These are the two affidavits of Reyes and Cruz, referred to in my testimony.

(Paper offered in evidence, and marked C. H. W. No. 2*b*.)

EXHIBIT C. H. W. No. 2*b*.

In the town of Piedras Negras, on the nineteenth day of March, eighteen hundred and seventy-four, personally appeared before me, Jose Angel Maldonado, local judge of the said town, and my attesting witnesses, Cresencio Reyes, a resident of this place, who is personally known to me, and who, having been duly protested according to law, deposed that he is a Mexican citizen, born at the town of

San Buena Ventura, in the State of Coahuila; forty years of age; married; and a farmer.

That the deponent, in the year 1865, was in the army, with the rank of sergeant, in the corps of the "Legion del Norte," General Escobedo being the officer in command of the Mexican army which was operating against the Archduke Maximillian, of Austria. That at the time referred to by him the force in which he was serving was scattered over the State of Tamaulipas in guerrilla bands, and that at this same time it happened that one of the guerrilla bands, under the command of Colonel Planton Sanchez, killed three Americans, named Kearney, Standish, and Parsons, who were executed on the banks of the San Juan river. This was done through an error, because when the guerrillas met them they thought that they were enemies, because they were foreigners, and it was for this reason that they killed them by order of the said Colonel Sanchez.

That he knows of the occurrence by the report which he heard among the troops, and also because he was so informed by the soldiers who carried out the execution. That after the occurrence took place the mistake was discovered, when the only remedy was to conceal it or keep quiet about it. That the foregoing is all that he has to say, which, having been read to him, he confirms and ratifies it upon the protest (oath) given by him.

The judge signing for the deponent, who does not know how to write, with the attesting witness.

JOSE ANGEL MALDONADO.

Witnesses:
JAMES VILLARAL.
FRUMENCIO RANON.

In the town of Piedras Negras, on the twenty-sixth day of March, eighteen hundred and seventy-four, personally appeared before me, Jose Angel Maldonado, the local judge, and the attesting witnesses: Florencia Cruz, a resident of this place, who, having been duly protested (sworn) according to law, deposed that he is a Mexican citizen, born in the State of Nueva Leon, in this Republic; forty-one years of age; a widower; by trade a shoemaker, and now re-
133 siding in this place. That about the middle of August, 1865, he was serving as a corporal in the Mexican army, at that time operating in the State of Tamaulipas against the forces of the Empire of Maximillian, and that at this time, after an encounter with the soldiers of the Empire at Coma ranch, the pickets of Colonel Rafael Platon Sanchez's command, of which one Dario Garza was captain, killed three foreigners named Conrow, Standish, and Parsons near the San Juan river.

That he recollects that of the soldiers who carried out the execution, one was named Nicholas Alaniz, another Gabriel Martinez, and others whose names he does not recollect. That deponent did not witness the execution, because when it took place he was away in the direction of Linares and Galiana, under the command of General Francisco Naranjo, but that when General Cornales Naranjo received a dispatch from General Canales, directing him to return

to the Coma ranch, for the purpose of fighting the enemy who were marching from Monterey to Camargo, they returned by the Aldamas road, and General Canales had already repulsed the enemy with his own forces, and the said Standish, Kearney, and Parsons had been already killed, and the occurrence was the public talk among the troops.

That the general commanding the Mexican forces at that time was General Escobedo.

That he also recollects that officers in command of the troops ordered them to keep silence with regard to the death of those foreigners, because they had been killed under the belief that they were enemies, and they wanted it to be thought that they were so. That the foregoing is the truth upon the protest (oath) given by him, which having been read to him, he confirms and ratifies it, not signing it, because he does not know how to write, but the judge and attesti g witnesses did so.

JOSE ANGEL MALDONADO.

Witnesses:

LUIS MUZQUIZ.

ELERUERIO FLORIS BEPO.

They are in Spanish and English. All the copies of these affidavits were originally attached to those of the argument by the printer with threads, but, on receiving the information to which I before referred, that the commission would not consider them, I detached all the copies myself, all the copies I mean which I retained myself.

(Paper shown to witness.)

This is in my handwriting. It is the original manuscript of the last-mentioned argument C. H. W. No. 2*a*, and from this the argument was printed.

(Paper offered in evidence and marked C. H. W. No. 3. Same as C. H. W. No. 2. Print.)

The Musser I have referred to is the same person who was a party in these proceedings. With regard to Mr. Musser, as I stated in my testimony, I gave myself no trouble whatever about his quarrel with Dr. Porter; in fact, I knew nothing of it until it culminated early in 1872. I thought then that it was a controversy that ought to be settled without any difficulty, and tried my best to persuade Dr. Porter to that effect. I notice in Mr. Musser's testimony in the
134 Chiles' cases, I think, that he considered me a "creature" of Dr. Porter. I suppose from all that has transpired in this case that he may be executed for such an opinion, for in many points through these cases he evidently was not very particular as to what he did say. In one instance he informed Mr. Quiezenberry that he had seen me, and that I had written to him that I was perfectly willing that new powers of attorney should be made to Messrs. Pike and Johnson, when, in fact, I had then never seen him in my life, and I had never written to him to any such effect.

Mr. Musser was cognizant of the fact that I was employed in these

cases, for one or more letters passed between us, and he received (and has referred to it in his testimony) certainly one of my arguments, if not all.

Mr. McManus knew that I was employed as counsel and was acting as counsel. McManus had negotiated with Porter about getting some further testimony, and they came to me, and I objected that it was unnecessary to get any more cumulative testimony. McManus stated to me that he had seen the half brother of Planton Sanchez, and that he could get from him an affidavit to the effect that his half brother, Planton Sanchez, had acknowledged to him that these gentlemen were slain by his order. I said that if he could get that testimony it would be valuable, but the testimony he finally produced was cumulative to what we already had, and I was not surprised that it was rejected. Mr. McManus seemed to be under the impression that I had power to make the contract. I explained to him that I had no such authority, but his distrust of Dr. Porter was so fixed that upon my explanation to him that my executing the agreement could give it no additional force, I consented to sign it and did so. The parole agreement, which was afterwards evidenced by the written one, was subsequent to the filing of my first argument, March 30, 1872. Porter was anxious about the cases, because he thought there was not sufficient direct testimony of the killing. I do not know Mr. Rutledge Wilson. I observe that some of the witnesses have testified that I employed Mr. Wilson to translate some of the papers, but I have no personal recollection of him. Mr. Peugh attended to them. All the arguments and briefs referred to in my testimony were produced by me alone.

When the argument was being prepared, before the umpire referred to by Porter in his testimony in rebuttal, a violent assult by a colonel in the Guatemalian army upon Mr. Magee, the British consul, and the Government of Guatemala promptly disowned the act, and the officer was killed in the attempt to arrest him. The government made reparation by saluting the British flag, and gave Mr. Magee $50,000. It occurred to me that that incident was a complete answer to the argument of the counsel of Mexico, before the commission, that Mexico was not responsible for Sanchez' alleged acts, even if he had committed them. I thought that this argument would have great weight with Sir Edward Thornton. In reference to my first connection with the case, I will state that I recognized Mr. Peugh
135 alone as the person here authorized to conduct the cases in the absence of Dr. Porter. I don't think, at that time, that I knew of Mr. Rittenhouse's connection with the cases, but certainly all my conferences were with Mr. Peugh, who devoted himself to all the necessary duties of an attorney. Subsequently I learned of Mr. Rittenhouse's connection with Mr. Peugh, but even then my consultations were entirely with Mr. Peugh as the active man in the necessary duties of an attorney. Of course, when Dr. Porter was in the city he was consulted by both of us, and we acted together.

Examination adjourned to Tuesday, the 13th day of April, 1880.

J. C., *Exam'r.*

TUESDAY, *April 13th*, 1880.

Met pursuant to adjournment. Present: Mr. Ingle, counsel for Winder; Peugh, *pro se;* Mr. Johnson for Porter, and Mr. Pike for Chiles.

Whereupon the examination-in-chief of CHARLES H. WINDER was resumed as follows:

By Mr. INGLE:

Q. When Dr. Porter arrived here in 1871 did you call upon him or did he call upon you in relation to your employment in those cases?

A. I purposed to call upon him, but he anticipated me, and came to my office in company with Mr. Peugh. The subject-matter of these cases was discussed between us, and he was informed of the arrangement that I had made with Mr. Peugh to write a single argument upon the testimony then in hand. I explained to him how my services in the cases had gradually extended until it embraced the supervision before the commission of all matters relating to them. I further told him that my services had been so greatly enlarged and my responsibilities increased that it was necessary we should make some new arrangement. I informed him of all that had been done by me, to all of which he expressed himself entirely satisfied, and readily assented to the propriety of making a further arrangement. That arrangement consisted of an agreement to allow me five per centum of all the awards that might be obtained in these three cases. This agreement was a verbal one, and not reduced to writing until April, I think, 1874. That agreement is on file in these cases, and the dates will show. I put that paper among my private papers, and did not see it again until after these proceedings had been begun. In that agreement four per centum is mentioned as the amount of compensation. How that discrepancy between that and the verbal agreement came about I cannot explain—don't know; but I do know that Dr. Porter himself all along believed the amount agreed upon was five per cent.

Q. Was Dr. Porter constrained to employ you as counsel in the cases?

136 A. On the contrary, he did not hesitate, but expressed himself as entirely satisfied with what had been done, and with the manner in which it was done, and in our relations since he has always expressed entire satisfaction with my conduct in the case, and has over and over again asserted to me verbally, and in writing, that I was the only one connected with the cases to whom he was indebted, and had faithfully performed their contract.

Q. Dr. Porter has sworn: "I returned here in the fall of 1871, received notice from the commission that the claims of Parsons, Standish, and Conrow must be closed up." To whom were these and other notices sent, and, so far as you know, were any of them addressed directly to Dr. Porter?

A. The notice referred to in the question was issued in 1872. I received such a notice from the commission to this effect: That all

cases undisposed of on the 1st day of April, 1872, would be entered as heard. Of course, I cannot say that Dr. Porter never received such a message, but the notice was sent to me, and thereupon I filed my first argument in March, 1872. The cases were then declared closed by the commission, and I had every confidence that these cases would successfully stand upon the record as it then stood. They were, however, reopened by the commission upon a motion by the Mexican attorney to dismiss or to extend time to allow Mexico to file further testimony. The motion to dismiss was refused, but the time asked for was extended. All the testimony filed after that on both sides was cumulative only, and did not, in my judgment, affect the merits of the cases.

Q. In using the personal pronoun "I," in your several arguments before the commission and before the umpire, and in your communication with them and him, did you really mean yourself or somebody else. Did it occur to you, or did you have reason to believe from your course of dealing with them and him, that they, or he, would suppose you meant somebody else?

A. Well, of course, I can't tell what they thought, but I suppose they could think of no one else but the writer—"I," myself. In other words, I wrote those arguments, such as they are, as the conclusions of my own judgment without reference to any one else. No one ever saw the arguments until they were prepared and finished.

Q. In the fourth paragraph of your bill in the above-entitled cause No. 7011, you allege, among other things, that under your agreement with Dr. Porter you were to have a lien for your compensation upon the amount which should thereafter be awarded on said claims, and also that you have never received payment or satisfaction of any part of said compensation. Dr. Porter, in his answer filed March 2, 1880, admits the allegations of said fourth paragraph to be true. On the 9th day of March, 1880, Dr. Porter, as a witness in his own behalf, swears:

137 "I had a contract with Mr. Winder to assist me in the prosecution of the claims in controversy, to pay him when the cases were decided, and I collected the fees. The fee which I was to pay Winder was four and a half per cent., but the contract has been annulled by paying him money at different times, and an understanding between Mr. Winder and myself because of the unexpected expenses I had been put to that I would not be put to the compliance of that contract."

(Mr. Johnson desires the examiner to note that the quoted words of Porter were not drawn out in chief.)

Q. Which one of these, his two contradictory allegations, is true, and which one is false? State fully what is the truth.

A. The understanding between Dr. Porter and myself is correctly set forth in the first paragraph of this question. It is true that in my agreement with Dr. Porter I was to have a lien for my compensation upon the amount which should thereafter be awarded on said claims, and it is true that I have never received satisfaction or payment of any part of said compensation. I never made any transfer

of my claim to anybody, in whole or in part. It is not true that Porter was to pay me when the cases were decided and he had collected the fees. I considered that I had a lien upon any amount that might be awarded, and I certainly never would have consented that he should have collected any portion coming to me. It is not true that the contract had been annulled by the payment by Porter to me of money at different times. It is not true that there was any understanding between Porter and myself that because of the unexpected expenses he had been put to he would not be put to the compliance with that contract. The statement of Porter in that regard is simply absurd. I will state, however, that on one occasion when Porter stated to me that he had borrowed very large amounts at ruinous rates to carry on these cases, I said to him that if the rest of the parties concerned in the cases would consent to scale their fees for the purpose of reimbursing, in part, the expenses he had incurred, I would cheerfully do so too. This was before the award was made, but I cannot give the date. This was the end of the matter, for he seemed to be utterly hopeless of obtaining the consent of all parties concerned.

Q. In your bill in this cause, filed Oct. 13, 1879, you allege that said Porter has always recognized, and still does recognize, the validity and obligation of his said agreement with you. State whether or not that allegation is true?

A. I have not seen Dr. Porter for some time, probably a year, but up to my last interview with him he not only recognized the validity and obligation of his agreement with me, but since these proceedings have begun he has earnestly sought me and has written to me recognizing and admitting my claim, and stating to me that he de-
138 pended upon me to carry him through this controversy, and requested me to call upon his counsel and confer with him, and I did so. I called on Mr. J. J. Johnson, and from them both I learned that there was no dispute about my case, and that Porter always admitted that I ought to be paid.

Q. Who was the attorney for the United States before the commission?

A. Mr. J. Hubley Ashton.

Q. Is he now living, and, if living, where?

A. I understood that he is now living in this city, and has an office here on F street, between 6th and 7th street- N. W.

Q. State the course of practice of the commission in relation to receiving papers.

A. All papers and documents intended for the consideration of the commission were required to be transmitted through the Department of State. I do not know of any case in which papers or documents reached the commission in any other way, nor do I believe that there is any such case.

Q. Doctor Porter swears in his so-called evidence in rebuttal, in the above-entitled cause No. 6703, Chiles *vs.* Porter *et al.*, that he knows the affidavits procured by McManus were not received and filed either by the commission or by the umpire, and that he

(Porter) took them to Mr. Ashton, who refused to let them be filed, &c. State exactly how that was.

A. This cannot be so—that he carried them to Mr. Ashton, and that Mr. Ashton refused to let them be filed—for the reason that papers could only reach the commission in the manner I have described in my former answer. Nor do I believe that Mr. Ashton would undertake or did undertake to determine what should or should not go before the commission. Literally, I know nothing personally about Mr. Peugh's connection with these cases. I was informed by Mr. Peugh, when I entered into these cases, that he was acting under an agreement with Porter; that Porter was not then in the city, but would ratify it on his arrival. I have no knowledge of the agreement between Porter and Rittenhouse and Peugh, nor have I ever seen it to this day. I have no knowledge of the advance of money to Porter by Rittenhouse and Peugh, except upon information of those three gentlemen. With regard to the statement contained in the 8th paragraph of Mr. Peugh's amended cross-bill in cause of McManus *vs.* White *et al.*, No. 6382, I would say that I have no knowledge of the amount of money Mr. Peugh may have spent in the matter; but as attorney in fact and agent he was industrious and persistent in his efforts to procure testimony and to forward the proceedings before the commission. I think he was especially diligent in getting the parties in Missouri to furnish the necessary pleadings in the case—I mean memorials—and also the testimony
139 upon which the cases were adjudicated. My belief at the time was that it was in a great measure due to his efforts that the testimony was received in time to meet the requirements of the commission in relation to the closing of the cases on the 1st of April, 1872. I don't know of any duties strictly as counsel that were performed by him. With regard to the statement contained in the said amended cross-bill, I have to say that I will have to repeat what I have last said.

Examination adjourned to Wednesday, the 14th day of April, 1880, at 10 a. m.

WEDNESDAY, *April 14th*, 1880.

Met pursuant to adjournment. Present: Mr. Ingle for Winder, Mr. Johnson for Porter, Mr Pike for Chiles.

Whereupon the examination of CHARLES H. WINDER was resumed as follows:

I became aware some time subsequently to the transaction that Rittenhouse had sold out to Porter the interests of himself and Peugh in these cases, and that in these proceedings he had suffered a decree *pro confesso* to be taken against him, and I therefore concluded that they had really parted with their interest and stated in my bill that they had no interest in the matter. I visited Mr. Rittenhouse during the period of his examination and I found him in an extremely low state of health from a disease which I knew to be of long standing, and he was very much reduced. I thought that his mental energy was very greatly impaired. I called his atten-

tion to two statements that he had made in his testimony—first, as regards an estimate of the value I had placed upon the evidence procured by MacManus from Mexico; and secondly, a statement he made in reference to some supposed agency of Mr. Pomeroy in these cases—ex-Senator Pomeroy. I told him that he was entirely mistaken in saying that he had derived the information from me; that I had never regarded the testimony produced by MacManus as other than cumulative, and had disposed of it in my argument in answer to the attorney for Mexico in a paragraph of about five lines, and as regards Mr. Pomeroy, I never heard his name mentioned in connection with these cases until I saw it in his (Rittenhouse's) testimony. He replied that he was satisfied he was mistaken, and that he had confounded me with Peugh, MacManus, and others, who were constantly talking to him about these cases. I will state that from the time I entered into these cases I have no recollection with ever having conferred with Mr. Rittenhouse in relation to them up to the date of their allowance. Since these proceedings have commenced I have visited him at his office several times, but no such conversation took place there. He promptly said he would correct, and did correct, his testimony in the particulars referred to. The visits I at first referred to and from which I deduce my estimate of the condition of his health was at his own house, and he was lying on a sofa in his bed-room, where he delivered his testimony, as he informed me.

140 The statement in correction made by Mr. Rittenhouse, at the bottom of page 20 and top of page 21 in his deposition on his own behalf in case of McManus *vs.* White *et al.*, is true.

In regard to the connection of John Chiles with these cases, I know nothing in the world about the relations between Porter and Chiles. I never heard of Mr. Chiles until a late period in the progress of the cases—I think not until the time of their allowance, or shortly before. Porter came into my office, and, in a great state of excitement, informed me that Chiles had met him and made a claim to an interest in the cases without the shadow of a foundation. I asked him upon what alleged ground he made the claim. He said that shortly after the commission was organized Chiles had told him that he knew of some cases out of which money might be made, and proposed that they should jointly undertake to prosecute them; that shortly after he, Porter, went to New York, and on his return to Washington he saw Chiles, and proposed to him that if he would furnish necessary expenses to procure powers of attorney, testimony, and other necessary expenses for the prosecution of the cases that he would go in with him, he, Porter, to do all the work. Chiles declared his inability to raise the money, and there the matter dropped, and Porter heard nothing more of the matter until about the period I have alluded to—a little before or a little after the claims were allowed.

Shortly after that I was on the Avenue, when I was stopped by a gentleman who introduced himself to me as Mr. Chiles. He stated to me that he was interested in these claims, and that Porter was disposed to ignore him, and that he wanted to talk with me about

it. I told him that I did not know anything about his relations with Dr. Porter; that I was counsel simply in the cases, and had no power or authority in the matter. We parted, and the next time I met him was in August, 1875, at the office of Messrs. Pike and Johnson, on the occasion of my interview with Mr. R. H. Musser. Nothing transpired there in relation to his connection with the cases, as I remember.

Subsequently to that—perhaps a year or two—I met Mr. Chiles on F street; but so transient had been our former meeting—so little impression was made on my mind (Mr. T. J. Miller here appears for MacManus; witness proceeds)—that I did not remember him. He introduced himself again, and introduced the subject of these claims and his connection with them. I again told him I knew nothing in the world about his relations with Dr. Porter; that I was merely counsel and not a representative of the complainant before the commission, and was not therefore in a condition to discuss the matter. These were all the interviews I ever had with him, and so transient and immaterial were they that no impression of Mr. Chiles' identity was left on my mind, and I do not think I would recognize him if I were to see him. I will state further
141 that in the progress of my connection with these cases, and in my constant supervision and examination of the files and records in the commission in the cases, I did not anywhere discover a trace of Mr. Chiles' connection with them. I think before Pike and Johnson came into these cases there were some ten or fifteen depositions taken and filed and all the pleadings completed, and among the testimony filed was that of Mr. Siler, which I then believed would conclude the cases, and which I now know did conclude them. There were subsequently filed a good many depositions, but all cumulative, to that which had already been filed, and were of exactly the character of that produced by MacManus, excepting that his did not arrive in time to be received. I suppose it is only a matter of opinion between myself and a much abler man (Gen. Pike) as to the value of the testimony, but I had an unshaken confidence that the cases stood upon solid grounds, fortified as they were by Siler's testimony, and that was all filed before Pike and Johnson came into the cases. In fact the cases were closed on the first day of April, 1872, and were only reopened upon the application of Mexico. If I am not mistaken, Gen. Pike states in his testimony that the deposition of Duffy, I think, was valuable to rebut an *alibi* upon which Mexico relied. I think this is clearly a mistake, for that evidence, like all the other depositions except Siler's, was founded on the general belief of the neighborhood. The only proof offered by Mexico tending to establish an *alibi* were two commissary muster-rolls purporting to be for the months of August and July, 1865, of the officers and troops in the State of Chihuahua. Upon their face they were admitted to be simply copies of the muster-rolls for those two months, made six years after, the originals of which were also admitted never to have reached the Department of War. Upon these returns appeared the name of Colonel Planton Sanchez. I think I clearly demonstrated in my argument that they could not

be, as they purported to be, the returns for the months of August and July, 1865, because they were dated respectively on the 5th of July and 5th of August, and therefore they must have been respectively for the months previous to August and previous to July; that is to say, for the months of June and July. The murder of these gentlemen having taken place on the 15th of August, 1865, the attempted *alibi* fell to the ground.

I received prior to April 1, 1872, a notice from the commission that all cases before the commission would be entered on April 1, 1872, as "heard." The notice is not in my possession. I either handed it to Dr. Porter or he got it at my office, as he had a right to do. I believe Messrs. Pike and Johnson did file arguments in the cases. I think I may say certainly I have seen two. Maybe more. I don't know. I did not read them. I had filed my argument on the 30th of March, 1872, and some month or two after that, I don't know how long, perhaps a month or two, I was informed, by whom
I cannot recollect, that it bore the signature of Messrs. Pike
142 and Johnson, in manuscript. Some time after that, perhaps immediately, I went to the office of the commission and examined the copy I had filed, and I found the name of "R. W. Johnson" appended thereto in manuscript. I was a little annoyed at the matter, and some time afterwards I met Mr. Johnson, whose relations with me had been long of the most friendly and pleasant character. I called his attention to the subject, and he said he considered it an act of comity; that he considered our friendly relations justified his taking that liberty, and there the matter dropped. Mr. R. W. Johnson was a member of the firm of Pike and Johnson.

Mr. Musser did transmit a mass of testimony and among it the affidavit of Mr. Siler. These were transmitted to Messrs. Peugh and Rittenhouse and he charged them especially to be careful of Mr. Siler's testimony, as in his judgment the cases depended on that testimony.

There was nothing in Clark's affidavit to raise the least doubt as to who the murderers were; that is, what was their character. He stated distinctly in his affidavits, two I think, that the morning after the murder he visited Parsons' camp and there he saw the dead bodies of Mexican soldiers and other evidences of a fierce conflict. His calling them "robbers" could by no means mislead as to the character of the perpetrators, for while they were soldiers of Mexico they were unquestionably robbers too.

There was no evidence to the effect that the persons killed were spies, except the admission of Sanchez himself, and I think, perhaps, Escobedo, and one other witness, I think one of those witnesses at Monterey mentioned that the act was done under the impression that they were spies, but there was no attempt to prove any such thing. Sanchez' excuse was that he thought they were spies.

The amended affidavits filed before the commission were some of them in my handwriting, and most of them probably in Mr. Peugh's. When I first went into the case at Mr. Peugh's request, on examining the affidavits and other papers he had, I found them to be in

my judgment defective. I suggested corrections necessary to be made, and wrote myself some three or four of these affidavits, eliminating the objectionable matter, and Mr. Peugh prepared the rest and sent them all back to Missouri to be executed. They were returned to him and filed by him in due course.

(1 p. m.—Recess for 15 minutes.)

(After recess witness resumed.)

As to the depositions mentioned by Col. Musser at pages 146 and 147 (orig. Ms.) in cause of Chiles *vs.* Porter *et al.*, Eq. 6703, three or four of them I wrote out and left the rest to be prepared by Mr. Peugh. I was looking over the docket the other day, and found three or four of them in my handwriting, and I believe that is about the number I wrote.

The letter written by Mr. Musser to Dr. Porter dated April 20, 1871, and mentioned by Musser at page 159 of his deposi-
143 tion in Eq., cause 6703, in which he asked him to return within a fixed period the letters which he alleges Porter had surreptitiously taken from his office. Notwithstanding the notice referred to in this letter Mr. Musser did unquestionably continue to recognize and to correspond with Messrs. Peugh and Rittenhouse in reference to these cases up to early in 1872, and in that way for nearly a year after this notice he did recognize Messrs. Peugh and Rittenhouse, and of course, Dr. Porter, in the cases. I believe I have before stated, and if I have not I will now, that at the time that letter was written and for a long time after I was ignorant of the quarrel between Messrs. Musser and Porter and of course had nothing to do with it. (Counsel for Chiles objects to so much of the answer of witness as is argumentation and predicated upon an opinion of his own.)

When I speak of Musser's recognition of Messrs. Peugh and Rittenhouse, I mean that it was by instructions to them.

(Objected to by counsel for Chiles as not in form.)

Q. What do you mean by Musser's recognition of Messrs. Peugh and Rittenhouse?

A. I mean his writing to them letters of instruction in relation to these cases.

(Counsel for Chiles objects, as it is testifying as to letters without producing the letters themselves, which are the best evidence.)

I first heard of the disagreement between Musser and Porter some time early in 1872. That is my recollection now.

Cross-exam. by Mr. JOHNSON for PORTER:

Q. At the meeting to which you have testified at the office of Messrs. Pike and Johnson, who were present, and what was said and done or attempted to be done, with a view of recognizing, or taking care of, and protecting Porter's rights and interests in the claims in controversy?

A. I think that two members of the firm of Pike and Johnson were present, the two junior members—Dr. Porter, Mr. Peugh, and myself. As I have already stated in my testimony the original powers of attorney with substitution were exhibited. Some surprise was expressed by the gentlemen of the firm, and after some conversation on the subject with a design to produce reconciliation of conflicting views and interests it was proposed by some of us, I don't remember who, that a basis of understanding should be presented; I drew up a short memorandum with that view and presented it to those gentlemen, but it was not satisfactory to them, and there the matter dropped.

Q. Was any paper drawn up? If so, by whom, and for what purpose?

A. I have stated the purpose in my foregoing answer. I kept no copy of that paper, and have no recollection of its contents.

Q. If you answer that a paper was drawn up for Porter to sign, state if you know why he did not sign said paper.

144 A. My recollection now is that those gentlemen themselves objected to the admission of the paper. In this, however, I may possibly be mistaken.

Q. State all that was said at the office of Messrs. Pike and Johnson concerning these cases, fully and in detail.

A. It has been now six years since, and I cannot possibly recollect the conversations that occurred.

Cross-exam. by PIKE for Chiles:

Q. Were you, after your employment by Dr. Porter, the employee of Peugh and Rittenhouse, or either of them?

A. I considered that my arrangement with Dr. Porter merged my arrangement with Peugh and Rittenhouse, but regarding Peugh and Rittenhouse as attorneys under Dr. Porter. I continued to act with them in the cases, but I regarded, and do still regard, my arrangements with them for preparing the opening argument as a matter between themselves and me, and that they are now in my debt for at least $1,000.

Q. My understanding of the tenor and purport of your last answer is that from and after your employment by Dr. Porter, your relationship to Peugh and Rittenhouse in regard to the prosecution of these claims was not that of an employee of them or either of them, but as an employee of Porter in friendly relation to them, but whilst independently yet like them interested in the successful prosecution of the cases. Am I correct in my conception of your answer?

A. While I did not consider myself as an employee of Rittenhouse and Peugh, after my arrangement with Dr. Porter, I still considered it my duty to co-operate with them in the prosecution of the cases, particularly in the absence of Dr. Porter himself from the city, considering them to be the attorneys-in-fact under Dr. Porter's appointment.

Q. Were you, by the terms of your contract with Rittenhouse and Peugh, made before you entered into your contract with Dr.

Porter, under legal obligation to render any service at their instance and request; and were they, or either of them, under any legal obligation by virtue of that contract to pay you anything for any service you might render of them or either of them in the course of said prosecution?

A. Recognizing them as duly constituted attorneys under Doctor Porter, I deemed it my duty to co-operate with them in the prosecution of the cases, but I did not, and do not now, consider them either legally or morally bound to pay me any compensation after my contract with Dr. Porter.

Cross-exam. by LEWIS for MacManus:

Q. Look at that paper marked Exhibit Pl'ff, No. 1, purporting to be a copy of an agreement between Richard H. Porter and Charles A. Winder of the first part and Thomas P. McManus, of San Antonio, Texas, of the second part, and say whether it [is] not a copy of a paper signed by you.

A. I presume it is; I have no doubt of it.

145 Q. Is not the original of that on file in the records of the State Department?

A. I don't know the fact, never having seen it there.

Q. Did you not write the agreement of which that purports to be a copy?

A. I did write an agreement, and I believe that is the copy of it.

Q. Did not R. H. Porter sign the original of that paper in your presence?

A. He did.

Q. At the time that agreement was entered into between Dr. Porter and yourself and Thomas P. McManus, was not the testimony to which it refers, obtained by Thomas P. MacManus, deemed at the time of great importance to the successful prosecution of the claims before the joint commission both by yourself and R. H. Porter?

A. I don't know what Dr. Porter thought of it. For myself I regarded it as strong corroborative cumulative proof to what had already been introduced. The original paper prepared by Mr. MacManus and presented to me for inspection set forth that one Don Pedro Winkler, who was a half brother of Planton Sanchez, could testify to the fact that his half brother, Planton Sanchez, had acknowledged to him that he had ordered the murder of these people under the impression that they were spies. That I regarded as very important, but that affidavit did not come.

Q. Did you not prepare the form of the affidavit to be signed by Reyes and Cruz?

A. I don't know; I think it is extremely likely I did, but I can't say that it came back in the form that I wrote it; it came back in a different handwriting from mine; my opinion as to the value and strength of the testimony was a matter of no importance whatever, because it was to be passed upon by the commission.

Q. You have stated in your examination-in-chief that there was a verbal understanding between Thomas P. MacManus, R. H. Porter, and yourself previous to the signing of the written contract just

referred to in reference to testimony to be procured by MacManus from Mexico. Were not the affidavits of Cruz and Reyes procured by him in pursuance of that agreement or verbal understanding, and was not the agreement in writing of the 21st April, 1874, signed by Dr. Porter and yourself, after the affidavits of Cruz and Reyes had been received and examined by you and Dr. Porter?

A. Well, sir, I believe not. This agreement is dated April 21, 1874. These affidavits were made in the town of Piedras Negras, March 19, 1874, and March 26, 1874, Reyes 19th and Cruz 26th March. I do not believe (I can only give my belief) that these affidavits reached here before this agreement was made, but I do not know.

146 Q. Did you not prepare the brief, Exhibit C. H. W. No. 2*a*, after the affidavits of Cruz and Reyes were received?

A. I did.

Q. Can you state at what time you prepared that brief?

A. I cannot; I did not date my briefs, unfortunately.

Q. Can you state the time at which you addressed a communication to Secretary Fish transmitting the affidavits of Reyes and Cruz to the joint commission?

A. No; I cannot.

Q. Was not your communication to Secretary Fish transmitting the affidavits of Reyes and Cruz dated May 22, 1874?

A. I cannot say.

Q. Was it not a fact that subsequently to April 1, 1872, or about that time, the agent of Mexico made a motion to the commission to dismiss the cases of Standish, Conrow and Parsons, or if the commission would not do that to extend the time in order to give Mexico time to file rebutting testimony, and did not the commission refuse to dismiss, but extended the time, and was not new testimony filed by Mexico?

A. Such a motion was made by counsel for Mexico. Some new testimony was filed; it was about the time referred to in the question.

Q. Was it not in consequence of new testimony filed by the agent of Mexico that you and Dr. Porter deemed the affidavits of Cruz and Reyes as important, being in rebuttal of the new testimony produced by Mexico, or having an important bearing thereon?

A. In preparing my second argument I devoted a single paragraph of five lines to that testimony. I considered that the legal propositions set by Senor Arita were not of sufficient consequence to require argument, but in addressing the commission I did state that I considered the testimony as of sufficient importance to be brought to their attention.

Q. Did you not, on this question, on the 6th day of December, 1875, when you were examined as a witness in the case of R. H. Porter *vs.* Mildred Standish and Richard H. Musser in a certain cause depending in the circuit court of St. Louis county, in the State of Missouri, testify as follows: "Subsequently to April 1, 1872, or about that time, the agent of Mexico made a motion to the commission to dismiss these cases, or if the commission would not do that

to extend the time in order to give Mexico an opportunity to file rebutting testimony. The commission refused to dismiss, but did extend the time for four months as I recollect it. New testimony was filed by Mexico, and three affidavits were filed by Dr. Porter. Upon this new testimony the attorney for Mexico made an argument, a copy of which and of the testimony was transmitted to me by Mr. Hubley Ashton, the counsel or attorney of the United States before the commission; upon the receipt of those papers I prepared my third argument."

147 (Objected to by counsel for Winder, as irrelevant, incompetent, not responsive to the examination-in-chief of this witness, and an utter and useless waste of time and encumbrance of the record.)

(Counsel for MacManus says that his question was in answer to question 3, put to witness on his direct examination.)

A. Of course, after five years I can have no recollection of the testimony I gave before that commission; but, as I presume the counsel has read from an authentic record of the proceedings, I think I so testified; and I am inclined to think that counsel is correct from the fact that the statements there are correct, except that I think there must be some mistake about the number of my arguments.

Q. Did you not in the same cause, in response to question 10, on cross-examination, which is as follows: "In your third answer, on direct examination, you stated that Dr. Porter filed three affidavits in said claims, and the agent and attorney of Mexico an argument against the claims; that the same being transmitted to you, you prepared a third argument. Please state now specifically the names of the persons whose affidavits were so filed." Did you not, in answer to that, testify as follows: "Two of the names you will find on that printed argument—Brescencia Reyes, Florencio Cruz, and Thomas P. MacManus."

(Objected to, for same reasons as in previous questions.)

A. It may or may not be my testimony on that occasion. I have no recollection of it; but those affidavits were filed.

Q. Did you not in the same cause, in response to question 14, on cross-examination, which 14th question is in words and figures as follows: "Please fix the date of said third argument to which we are now referring, testify as follows: 'My recollection is that it was prepared in the month of April, 1874. The first argument I wrote, with the supplemental argument attached to it, embraced a discussion of the original testimony filed by Mexico and the claimants, which was filed prior to April 1, 1872. Subsequently, as I have stated, leave was granted to Mexico to prepare new testimony. Upon this testimony so filed the Mexican agent made an argument; but in that argument he attacked the testimony of James W. Siler, whose testimony was filed prior to April, 1872; and in my reply to that argument I reviewed his objections to Siler's testimony; and in the course of my argument I commented upon the testimony of General Clarke and other witnesses, whose testimony had been filed prior to

April, 1872. I also commented upon the testimony of Michael Duffy *et al.* to sustain Siler.'"

(Objected to, for same reason.)

A. I can see now why that argument was called number 3. To my first argument was appended a supplemental argument
148 upon testimony that reached me after the main argument was printed. The supplemental argument, if that is my testimony, I must have called number 2, which would make the one I now call number 2 number 3. If that is a correct version of my testimony, I speak of it as my recollection at that time that my third argument was prepared in April, 1874. If I am right in my conclusions now, after having examined the records of the State Department, I am inclined to think that I was mistaken in my recollection then. Still I may be mistaken, and that third argument may have been prepared earlier. I say now that I have no recollection whatever of the testimony I gave at that time; but I have no doubt that the quotation of counsel is correct.

Q. Have you examined the records of the joint commission at the State Department since your arrival in this city at this time?

Q. I have, but my examination was for a specific purpose, and I overlooked much that was of no interest to me.

Q. Did you observe this entry on the records of the commission, in words and figures as follows: "1874, May 2.—Charles Winder, of counsel, addressed another communication to Secretary Fish, transmitting affidavits of Florencio Cruz and Crescuicio Reyes," or anything to that effect?

A. I will answer as I recollect it now, that the date was subsequent to May 2, 1864, but I may be wrong.

Q. Do you know who translated the testimony procured by Mr. MacManus?

A. I do not [k]now. That part of the business I never had anything to do with. Mr. MacManus has stated to me somewhere, in writing or otherwise, that I had this testimony translated by a Mr. Willson. Now, I would accept his knowledge of the fact against my want of recollection but from the fact that I never heard of Mr. Willson until I saw his name in this connection. Still I won't say that I had not attended to it.

Q. Can you recollect who paid for the translation?

A. Mr. Peugh had it done, but who paid for it I don't know.

Q. Did you not have it translated into English before you wrote your argument that it accompanied?

A. Undoubtedly, it was translated before the argument was made, at any rate before it was finished.

Q. Was not an English translation of the affidavits of Cruz and Reyes attached to the argument which you filed before the umpire; or, in other words, did not the testimony of Cruz and Reyes accompany your argument before the umpire?

149 A. The affidavits were attached to the argument by a thread. With regard to the second part of the question, I can only say that I received official information from the commis-

sion that they came too late for consideration by the commission, and the commission detached the affidavits and sent the argument to the umpire in order to inform him of the points against the argument of the counsel for Mexico. Of my own knowledge, I do not know that they did not go to the umpire.

Examination adjourned to Thursday, April 15, 1880, at 10 a. m.

THURSDAY, *April* 15, 1880.

Met pursuant to adjournment. Present: Counsel for Winder and for Chiles.

Re-examination of C. H. WINDER by Mr. INGLE:

Q. With reference to the affidavits of Reyes and Cruz, alluded to yesterday in the cross-examination by the solicitor for McManus as having been procured through him (MacManus), state whether or not they were taken under the seal of a court of record, in Mexico, as testified by MacManus in his deposition in his own behalf.

A. I don't know the mode of authentication of papers in Mexico, but there was nothing attached to the affidavits in question that we would call a seal here. There was no paper or memorandum of any kind whatever placed in my hands by MacManus, under the seal of a court of record in Mexico.

I supposed the time between the execution of the affidavits, and the time they were alleged to be received, was too short, for the reason that the dates indicate a time too short. The distance from the point in Mexico where these affidavits were taken to the city of Washington, and the time required after they arrived here to have them translated precludes the transmission of them in so short a period.

I know of no services or expenses on the part of MacManus in searching and obtaining the evidence necessary to establish said claims, other than the affidavits of Reyes and Cruz, to which I have referred.

Q. MacManus states in the third paragraph of his original bill that Porter was the person who entered into the agreement in writing to pay him for his services and expenses. Is that so?

A. Yes. I never knew of the verbal understanding between Musser and Porter, mentioned in the fourth paragraph of MacManus' original bill. I have no doubt that Musser was fully advised of the nature any substance of the contracts mentioned in MacManus' bill, and referred to in the fifth paragraph thereof, from the fact that Rittenhouse and Peugh were in constant correspondence with him and that he knew I was busily engaged in prosecuting the cases, and from the fact that he thought my acquiescence necessary to make a new arrangement with Mrs. Conrow, and perhaps the other claimants.

It is not true, as stated by MacManus in his original bill, that the depositions of Reyes and Cruz were accepted by Winder and
150 Porter, but were not admitted by me to be the necessary step to establish said claims. When Mr. MacManus and Dr.

Porter had discussed this matter and come to an understanding, MacManus, from a rooted distrust of Porter, refused to enter into a contract with him unless I would join him. I explained to him that I had no power or authority to make any contract in relation to these matters; that I was simply counsel in the cases, and that my name would be worthless except as a witness to its execution. I think he fully understood that from the fact that, if I remember aright, my name is not in the body of the instrument.

I have already stated that Mr. McManus is mistaken about my having employed Wilson or anybody else to translate the testimony of Cruz and Reyes. I had nothing to do with having any of the translations in these cases.

Counsel for Winder puts in evidence papers marked Exhibits C. I. No. 1 and C. I. No. 2.

EXHIBIT C. I. No. 1.

UNITED STATES OF AMERICA, DEPARTMENT OF STATE.

To whom all these presents shall come, Greeting:

I testify that the paper hereto annexed is a true copy from the files of this Department.

In testimony whereof, I, John Hay, Acting Secretary of State of the United States, have hereto subscribed my name and caused the seal of the Department of State to be affixed.

Done at the city of Washington, this 29th day of March, A. D. 1880, and of the Independence of the United States of America, the one hundred and fourth.

[SEAL.] JOHN HAY.

I hereby agree and bind myself to pay to Charles H. Winder for services already rendered and hereafter to be rendered in the cases of Sarah Mildred Standish, Mary Conrow, S. Kearney Parsons now pending before the Joint American and Mexican Commission now in session in the city of Washington, D. C., four per centum on the aggregate amount which shall be awarded in said cases.

Witness my hand and seal, this 21st day of April, 1874 Done in the city of Washington, D. C.

R. H. PORTER, [SEAL.]
Attorney-in-Fact.

Witness:
THOS. P. MACMANUS.
W. S. LEMONS.

WASHINGTON CITY, *February* 26, 1874.

Hon. HAMILTON FISH, *Secretary of State.*

SIR: I have the honor to transmit herewith a deposition of Thos. P. McManus in the cases of Mildred Standish, Mary Conrow, and children, and Jackson L. Smith, curator of the estate of S. Kearney Parsons, Nos. 385, 392, 397, pending before the Joint Commission of the United States and the Republic of Mexico, now in session in

this city. I respectfully request that you will without delay file said deposition with said commission.

I have the honor to be, very respectfully, your ob't serv't,

CH. H. WINDER,
Of Counsel for Complainant.

151 WASHINGTON CITY, *May 2d*, 1874.

Hon. HAMILTON FISH,
Secretary of State, Department of State, Washington, D. C.

SIR: I have the honor to enclose herewith the depositions o Florence Cruz and Crecencio Reyes in Spanish and an argument in in the cases of Sarah Mildred Standish, Mary Conrow, and S. Kearney parsons now pending before the Joint Commission of the United States and the Republic of Mexico, to which is appended a translation of the two affidavits referred to. I respectfully request that you will transmit the same to the commission with as little delay as practicable.

I have the honor to be, very respectfully, your ob't serv't,

CH. H. WINDER,
Of Counsel.

EXHIBIT C. I. No. 2.

UNITED STATES OF AMERICA, DEPARTMENT OF STATE.

To whom all these presents shall come, Greeting:

I certify that the paper hereto annexed is a true copy of endorsements upon documents on file in this Department.

In testimony whereof, I, John Hay, Acting Secretary of State of the United States, have hereunto subscribed my name and caused the seal of the Department of State to be affixed.

Done at the city of Washington this 29th day of March, A. D. 1880, and of the Independence of the United States of America the one hundred and fourth.

[SEAL.] JOHN HAY.

S. Kearney Parsons.—No. 397.

Filed 31 Dec., 1870. Deposition of Jas. W. Siler.
" " " " Affidavit of Jno. B. Clark.
" 13 Mar., 1871. Affidavit of Jno. B. Clark.
" 3 May, 1875. Manuscript argument before the umpire, signed by Ch. H. Winder, of counsel.

Filed 27 June, 1874. Printed argument before the Hon. the Joint American and Mexican Claims.

Commission signed by Ch. H. Winder, of counsel.

Mary Ann Conrow.—382.

Filed Sep. 23, 1870. Application to amend petition by making Elizah Stout, adm. of A. H. Conrow, party.

Filed Mar. 13, 1871. Depositions of John B. Clarke, John Allen, Caleb Conrow, C. F. Garner, Alex. Doniphan, Joseph E. Black David Queisinberry, T. T. Taylor.

Filed March 13, 1871. Deposition Jas. W. Siler.
" " 13, 1871. Deposition John B. Clark.
" " 13, 1871. Brief in the cases of Mrs. Conrow, Standish, and Parsons. Signed by Ch. H. Winder, of counsel.
Filed March 30, 1872. Printed argument, signed C. H. Winder, of counsel.
Filed March 1, 1872. Letter of consul at Monterers; statement of the Hon. the Secretary of State as to the character and standing of James W. Siler.
Filed June 23, 1874. Argument before the umpire in manuscript, signed Ch. H. Winder, of counsel, with printed argument "before the Hon. the Joint American and Mexican Claims Commission," attached.

(Mr. Pike, for Chiles, objects to Exhibit C. I. No. 2, as not being certified to be a full and complete transcript of the document referred to.)

The witness, CHARLES H. WINDER, is cross-examined further by Mr. HAY, as follows:

Q. Did Mr. Peugh ever tell you that he had sold his claims for fees in these cases?
A. Never; on the contrary, he always denied it.
Q. Did Rittenhouse ever tell you that Peugh had sold his interest to Porter?
A. Never.
Q. Who prepared the papers, and under whose instructions did Musser act in regard to them?
A. I presume in the question, you mean the papers in the cases that were filed with the commission. The papers that were in the possession of Mr. Peugh when I entered the cases were examined by me and certain material defects required them to be amended. I wrote three or four of them myself, from which Mr. Peugh prepared the others, and a great many more than I had written. Messrs. Peugh and Rittenhouse transmitted them to Musser, with instructions to have the new papers properly executed and returned. It was done, and Mr. Peugh filed them before the commission. Among these papers were memorials which had been sent by Mr. Musser.
I had prepared a brief which was filed with those papers by Mr. Peugh.

The witness, C. H. Winder, desires to correct his testimony, as follows: On page 57, I have stated that, if I remember aright, my name is not in the body of the instrument referred to; I find upon reference to the instrument itself that my name is in the body of it.
CH. H. WINDER.

Sworn to and subscribed before me, this 15th day of April, 1880.
JOHN CRUIKSHANK, *Exam'r.*

153 In the Supreme Court of the District of Columbia.

MACMANUS *vs.* WHITE *et al.*

At an examination held in this cause commencing March 17, 1880, before me, an examiner in chancery, personally appeared Charles E. Rittenhouse, the witness within named, one of the defendants on his own behalf, and after the witness was duly sworn, the within depositions were written down by me from the statements of the witness, read to him and signed by him in my presence.

JNO. CRUIKSHANK,
Examiner in Chancery.

In the Supreme Court of the District of Columbia.

McMANUS *vs.* WHITE *et al.* } No. 6382. Eq. Doc. 18.

MARCH 17, 1880.

Met pursuant to notice. Present: Counsel for def'ts, Porter, Winder, Chiles, Rittenhouse and def't Peugh, *pro se*, whereupon—

CHARLES E. RITTENHOUSE, a resident of Georgetown, D. C., a witness produced and sworn on behalf of himself, deposes and says: I am 67 years of age; engaged in business in Washington, D. C. I have lived in the District of Columbia since 1834, and in my present residence since 1841. I have been confined to my room for some weeks by illness.

Q. Are you interested in the awards of Standish, Conrow, and Parsons, obtained before the Joint Commission of Mexico and the United States; and, if so, at what time, and in what manner did you become interested?

(Sol'r for Porter objects to the competency of this witness, as the records and the pleadings show conclusively that the witness has parted with his interest, if he ever had any.)

(Sol'r for Chiles unites in the objection.)

A. I still claim my original interest of one-eighth of any award which might be made which I purchased from Dr. Porter some time in February, 1870.

Doctor Porter informed me that he had some claims against the government of Mexico for the loss of lives and property of certain parties—Americans—three parties—and that he wanted money to prove the facts, and proposed to sell me one-half of his interest in the awards which might be made, which he represented as one-half, if I would advance him $300. I replied that I would think about it, and let him know again. Mr. Peugh happened to be sitting by when Dr. Porter made this proposition, and after he (Porter) left he (Peugh) proposed or urged me to make the advance of the $300, and he would take half an interest and pay me his share, half of the $300, which he subsequently did. On the next day, or in a day or two

afterwards, I accepted Dr. Porter's proposition and paid him
154 the $300 cash, when he gave me a written assignment of one-half his interest in the awards which might be made, and which, as before stated, he represented as one-half of the awards. The contract was with myself and Mr. Peugh jointly, which original paper is, I understand, on the files of the State Department. Mr. Peugh and I immediately proceeded to prosecute these claims, and employed Charles H. Winder as counsel, which was approved by Porter, and after he had made his argument before the commission he informed us that the testimony was hardly sufficient to sustain the claims, and that it required some more direct and positive testimony, which they subsequently obtained through Thomas P. MacManus, who furnished and procured it at his own expense; that some of the soldiers—Mexican soldiers—were under the command of Col. Sanchez while these men were shot in Mexico. The cases I refer to were the cases of Conrow, Standish, and Parsons.

Q. Did you, in pursuance of this agreement, either by yourself or in connection with Mr. Peugh, continue to prosecute these cases by yourself or counsel?

(Sol'r for def'ts Porter and Chiles objects to question, as leading.)

A. Yes, we diligently attended to the business, and had frequent consultations both with Mr. Peugh and Mr. Winder on the subject.

Q. Did you incur any other expense?

A. We incurred the expenses of the translation of the testimony obtained by MacManus, which was in Spanish, and which we paid for; some other little incidental expense for printing, and so forth.

Q. If you have any knowledge of the authority of Porter to act for claimants, state what that authority was.

A. In making this proposition to me Dr. Porter informed me that, not knowing the claimants himself personally, he employed R. H. Musser, of St. Louis, who, he understood, was personally acquainted with claimants, to proceed to the respective residences of the parties and obtain powers of attorney to him (Porter) to take charge of and prosecute these claims before the Mexican Commission, and that Musser did obtain the powers of attorney, but not as agreed upon — (Porter's) name, but in his own name. Musser, however, Porter stated, substituted him as the attorney, and he (Musser) subsequently endorsed and confirmed his (Porter's) sale and agreement with Mr. Peugh and myself.

Q. State whether or not you ever had any communication with Mr. Musser.

A. Yes; Mr. Musser and I had frequent correspondence respecting these claims, in which he denounced Porter as having stolen the powers of attorney from his office after having returned them to him, stating his inability to obtain any money on account of them.

Q. Have you those letters in your possession?

A. No; I loaned the letters of Mr. Musser referred to to Mr. Peugh, as being interested with me, which he promised to read over for his own information and return them to me in a few days.

155 He however failed to do so, as he had loaned them to Dr. Porter, who refused to return them, and, as far as I know, has still control of them.

Q. State whether you have made any effort to obtain these letters.

A. Yes; I made frequent demands on Mr. Peugh for their return, as I regarded them as my property, but have never been able to obtain them.

Q. State whether or no you had any personal intercourse with Musser; and, if so, at what time?

A. During the prosecution of these claims Mr. Musser was several times in Washington and saw me in reference to them, and both before and after my relinquishment he admitted the validity of Mr. Peugh's and my interest in the awards which might be made; what I mean is that he expressed a willingness to stand up to the agreement made by Porter with us.

Q. State whether or no Musser ever ratified the agreement of Porter with Peugh and yourself in any other way than verbally as you have stated.

A. Yes; in the correspondence referred to he did frequently endorse and ratify the agreement made by Porter with us.

Q. State whether you have done anything to apparently impair your rights under this agreement; and, if so, what?

A. Having a number of claims placed in my hands by Dr. Porter against the different departments of the Government to prosecute as the attorney of records, in which he was to procure all said claims in a perfect condition with all necessary evidence as an offset to my time and services in their prosecution, being the same terms on which he knew I had obtained claims from other parties. Among these claims was one for the widow Hamilton, of Louisiana, which was to be prosecuted before the Southern Claims Commission, which he represented as a very large and valid claim. In September, 1872, he desired to get control of this claim and importuned me for one-half of his alleged expenses, which he represented as amounting to some thousands of dollars in getting up this claim and paying Mrs. Hamilton's expenses to and from Washington and witnesses. He demanded that I should pay one-half thereof, contrary to our original agreement. This demand I refused as in violation of the conditions of our agreement respecting all claims placed for collection in my hands by him. He, however, still importuned me for one-half of these alleged expenses incurred by him on this Hamilton case, and proposed that my interest in the case should continue, out of which I would obtain a larger sum than I would from whatever awards might be made in the Mexican claims, proposing that I should relinquished said interest in said Mexican claims as an offset to the one-half of his alleged expenses in the Hamilton case. In accordance with that proposition I made a relinquishment of my interest in the Mexican claims in writing. In this relinquishment the consideration was stated. Two years subsequently, in September, 1874, Dr. Porter desired to get possession and entire con-

156 trol of the claim of Mrs. Hamilton, and furnished me a list in writing of his alleged expenses in that and other claims

placed in my hands for collection, and proposed if I would relinquish all interest in the Hamilton case that he would relinquish any interest he had in any of the awards allowed from all claims in my hands. To this I assented. In the list referred to as furnished by him, he states sundry amounts as expended by him in getting up all these claims, and puts down the amount as expended on the Hamilton case at $360, one-half of which only he had claimed of me three years previously for my relinquishment in the Mexican awards which in this list would amount to $180, which he had previously claimed to amount to several thousand dollars, than I made the relinquishment.

Q. State whether or no, when Dr. Porter furnished you this list of expenses in 1874, he claimed as due from you one-half of the expenses included in the list.

(Sol'r for Porter objects to so much of the foregoing deposition as is hearsay; so much as undertakes to give contents of written documents; so much as is conclusion of law, and so much as is opinion of the witness, and especially is the last question objected to, because it seeks to set aside a contract made and entered into between the witness and Porter. Sol'r for Chiles concurs.)

A. No; his position was confined exclusively to the expenses alleged to have been incurred in the Hamilton case above. He only furnished the list to show the amount of money he ——

Q. State whether your original agreement as to expenses in the Hamilton case differed from your agreement with Porter in the other cases; and, if so, in what respect?

(Objected to by Porter's sol'r, because irrelevant, incompetent, and inadmissible under the pleadings, it not being charged in the answer that Porter committed a fraud upon the witness; nor is it even intimated by the witness in his deposition that Porter informed him of any fact, or did not inform him of any fact of which he the witness had not already full knowledge at that time.)

A. No; I received the Hamilton case on the same time as the others. My time and attention were to be an offset to any expenses incurred by him.

Q. You have heard the objection made by Mr. Johnson to the preceding question. State the facts as to whether or no you were in any way deceived or imposed upon by Dr. Porter in the matter of the relinquishment to him.

(Same objection as last above.)

A. I was, in making such relinquishment, influenced by his positive and repeated assurance to me that the said Hamilton case was valid, and that my interest therein would amount to more than I would be likely to procure from the Mexican awards, which I subsequently learned from Mr. Benjamin, the clerk of the Southern Claims Commission, that the Hamilton case was invalid and worthless from its inception. This opinion of Mr. Benjamin, of the Claims

Commission, must have been known to Dr. Porter, as Bart-
157 ley and Jenner, had, as I understood, previously control of this case, and had furnished Dr. Porter money to obtain the testimony to sustain it, but, on ascertaining the nature of the claim, relinquished it as worthless. I was deceived by Porter's representations as to the amount he paid, as the list he subsequently furnished me will show.

(List marked C. E. R. No. 1 shown to witness.)

LIST C. E. R. No. 1.—(Exhibit.)

Moneys paid out by R. H. Porter for obtaining and prosecuting certain claims in which C. E. Rittenhouse was interested in, from June, 1871, until July 5th, 1872 --	$2,500 00
Cash paid out in prosecuting and obtaining testimony, travelling to and from New Orleans on ac. of John Martin's and Jenkin's claims----------	$685 00
Cash paid out on account of James Darby's, Perry Merrill Godwin's, and other claims----------	$200 00
Cash paid out on account of Mrs. Hamilton's claim for bringing witnesses to Washington, for taking testimony, &c. ----------	$380 00
Besides own expenses to and from Washington to attend to the same ----------	6 20

This is the list referred to.

Q. Now, in your bargain with Porter, was it understood that you should also relinquish Peugh's interest as well as your own?

(Solicitor for Porter objects to question for irrelevancy, and it can in no possibility cut any figure in this case, because the witness has positively and unequivocally testified in language unmistakeable that the agreement, if any such was ever made, was between Porter and witness; that Porter left witness's office without consummation of the agreement to return; that during the absence of Porter the witness entered into a separate agreement with Peugh, to which Porter was not a party.)

A. No. This I emphatically, positively deny, as I had no more right to surrender his interest than I would have had to surrender a joint note in which he was interested on its partial payment.

(Answer objected to on behalf of Winder, as a conclusion of law.)

Q. Have you, as stated by Mr. Johnson in his objection, unequivocally and positively testified as to a separate agreement with Mr. Peugh?

A. No; I have not. I did not intend to make any such admission.

Q. Was this agreement made by you with Porter and afterwards separately with Peugh, or by you and Peugh jointly with Porter?

(Objected to, as the question has been answered before, and as a useless consumption of time and encumbering the record.)

158 A. The proposition was originally made to me, but the agreement was jointly with Mr. Peugh and myself.

Q. You signed a written relinquishment, as I understand it. Did you ever deliver a written relinquishment to Porter?

A. I have no recollection whatever of having surrendered said original agreement, as I then regarded said agreement as the property of Mr. Peugh, and that I had no right whatever to interfere with his separate interest—

(Answer objected to by counsel for Chiles, as a conclusion of law.)

(Witness resumes.)

and I have not at present the slightest recollection how the said agreement came out of my possession.

Q. Have you or not ever received any consideration for such relinquishment, other than that stated in your testimony above?

(Question objected to, and also objection to conference with the client by counsel while the client is on the witness stand.)

A. Not one cent.

Cross-examination on behalf of plaintiff, the questions being put by Mr. DEWEES, at Mr. MILLER'S request, in the absence of Mr. MILLER:

Q. What knowledge have you of the testimony obtained by the exertions of complainants?

A. I have always understood from our attorney, Mr. Winder, and from Mr. Peugh (the latter's intercouse with our counsel being more frequent than my own), that the result was very doubtful until this testimony obtained by Colonel McManus, which he obtained, as I understood, at his own expense; which testimony, as they represented, established the fact of the actual killing of Standish, Conrow and Parsons by soldiers under the command of Colonel Sanchez at the time they were shot.

(Answer objected to by solicitor for Porter, as being entirely hearsay, and only another instance of witness's detailing hearsay testimony, when the fact is, as shown by the record, that whatever depositions or statements were obtained by McManus were refused by the commission, and not filed.)

(Solicitor for Chiles unites in objection.)

Q. What was the necessity of such testimony?

(Objected to, as proper foundation has not been laid.)

A. As I understand the question, the necessity was to disprove an *alibi*, which it was supposed the Mexican representatives would get up.

Q. Have you, prior to the time of the commencing this suit, heard any expression from the claimants, the counsel, Winder, the defendants, Musser or Porter, as to the necessity for such testimony as was produced by the complainant, McManus; and, if so, what, when, and where?

(Objected to by solicitor for Porter, as secondary evidence.)

159 A. I can't state when and where; but I always understood it was necessary to establish the fact of the killing of the parties to have been done by actual soldiers, and not by marauding parties.

Q. Have you heard any expressions from any of the parties to this cause as to the effect of the testimony produced by the complainant, McManus?

(Objected to by Porter's solicitor, as a violation of every rule of evidence.)

(Solicitor for Chiles objects to question, as assuming that testimony was produced by plaintiff calculating to produce any effect on the commission, or that such testimony was ever received by the commission, when no testimony alleged to be procured by complainant was received or considered by the commission.)

A. I have heard no objections prior to the rendition of the awards to the validity and importance of this testimony; on the contrary, I have always heard from Mr. Winder and others, Mr. Peugh among the others, that the influence of Senator Pomeroy—this testimony being regarded as absolutely necessary—was presented to the umpire, whose awards were made thereon. This is what I always understood.

Q. Have you any knowledge or information derived from any party to this cause as to whether the depositions obtained by the complainant were used for the obtaining of awards on the claims of Parsons, Conrow, and Standish? If yea, answer fully your knowledge on the subject. If you speak on information, state fully from whom and when you obtained such information.

A. I have understood from Mr. Winder, the attorney in charge of the cases, that this testimony was filed before the umpire, Sir Edward Thornton, and was actually instrumental in obtaining the awards.

Q. Have you any knowledge or information derived from any party to this cause that after the awards, and before the commencement of this suit, the defendants, Porter and Musser, or either of them, affirmed the contract with McManus and assented to its binding force?

A. No; I had no information of any objection to it until recently, but always understood that his interest was admitted until efforts were made for the distribution of the fees.

MARCH 20, 1880.

Met pursuant to adjournment; whereupon Mr. Rittenhouse desires to make a correction in his testimony given on cross-examination by Mr. Miller, as follows:

I was mistaken, as I find on reflection, so far as regards the statements of Mr. Winder, in relation to the value of McManus' testimony and the interference of Senator Pomeroy, which latter information I must have obtained from other parties.

160 Cross-exam. by JOHNSON for Porter:

Q. Are you the same Charles E. Rittenhouse formerly a member of the banking house of Rittenhouse, Fowler and Co., or Rittenhouse, Fowler, Fant and Co.?

A. I am the same Rittenhouse who was a member of the firm of Rittenhouse, Fant and Co., previously of Rittenhouse, Fowler and Co., and previous to that of Rittenhouse, Sweeny and Co.

Q. Are you and Mr. Samuel A. Peugh or either of you lawyers and members of the bar of the District of Columbia?

A. I am not, but I believe Mr. Peugh is.

Q. Were you and Mr. Peugh engaged in business as partners in the claims business on the 16th February, 1870; if yea, where was your office located?

A. I had no other connection with him in the claim business except as stated in my testimony in connection with these claims of Conrow, Standish, and Parsons. My office was then the banking house of Rittenhouse, Fowler and Co.

Q. You say in your examination-in-chief that you still claim your original interest of one-eighth of the claims purchased from Dr. Porter—the claims of Parsons, Conrow, and Standish. Upon what theory do you now claim that interest?

A. That I never received one cent's consideration therefor for said relinquishment.

Q. Give the year and month when you relinquished your interest in the Parsons, Standish, and Conrow claims to Porter.

A. In September, 1872.

Q. What was the consideration for that relinquishment?

A. The consideration offered by Dr. Porter was the unjust claim of one-half of the expenses which he alleged to have incurred in the getting up and prosecution of the claim of Mrs. Hamilton, from which he represented I would obtain a much larger amount than my interest in these Conrow claims could possibly amount to.

Q. Look at the paper now handed you, dated September 2, 1872, purporting to bear your signature, and certified by the State Department as being a copy of the original on file there, and tell if that is the relinquishment you executed to Porter.

(Paper handed to witness, marked Exhibit ——.)

A. I am not now able to admit that this is a correct copy of the terms of my relinquishment, but I can furnish a correct copy from my office if that is necessary. It may possibly be so, but I don't recollect it in that light at all.

Q. What did you do towards prosecuting the Hamilton claim pending in the Southern Claims Commission from the date of your purchase from Porter, September 2, 1872, down to April, 1874?

A. I had frequent consultations with him on the subject and urged him to obtain testimony, which he was under obligation to do by our agreement. I had also frequent interviews with Mr. Benjamin, the clerk of the Southern Claims Commission, who never admitted the Hamilton claim to be a valid one.

161 Q. Did you or not employ Judge Embrey as your counsel to attend to your interest in the Hamilton matter before the commission?

A. I employed him as my associate counsel in that and a number of other cases.

Q. Was he employed by you before or after your conversation with Benjamin, the clerk?

A. I always employed him as such associate counsel on filing that or any other case before the commission.

Q. What was his opinion to you as to the validity of the Hamilton claim?

A. I have no recollection of his ever having expressed any positive opinion except as depending upon the evidence which Dr. Porter might obtain according to agreement to sustain the claim.

Q. Where was your office in 1871?

A. I think it was in building No. 1422 F St. N. W.

Q. Were you not very anxious to sell whatever interest you had in the Parsons, Conrow, and Standish claims?

A. I was not.

Q. Did not care to part with them, I suppose?

(Counsel for Porter objects to the witness conferring with his counsel before answering.)

A. I did not, but was only induced to make the relinquishment by his importunity and demands that I should pay him one-half of the expenses which he alleged to have incurred and represented as some thousands of dollars, in getting up the Hamilton case, which claim on me was contrary to our original agreement.

Q. Look at the letter I now hand you, dated September 2, 1871, and say in whose handwriting is the body of the said letter and whose signature is attached to the same.

A. That is my letter and my signature, and may have been the feeling at that time in regard to the value of those claims, and may have been written on representations then made by him as to his ability to sustain the claims.

(Witness' explanation now, in 1880, of what may have led to the writing of that letter in 1871, objected to.)

(Letter offered in evidence and marked C. E. R. No. 2.)

EXHIBIT C. E. R. No. 2.

WASHINGTON, D. C., *Sept. 2d*, 1871.

DOC'T R. H. PORTER, *St. Louis, Mo.*

DEAR SIR: I to-day rec'd y'rs of 29 ulto., with the express receipt, but the p'k'ge was rec'd yest'y, and the claim made up anew in proper form and sent to you at St. Louis as directed, with full instructions what to do. Just follow those instructions and have it all right.

I enclose a slip from the "Patriot" of yesterday about the Mexican commission, and you there see that if anything should ever

come from those cases it will not be available to us for a long time, so get rid of them at once and let us have the money back, as
162 I have had to put Peugh's paper in suit and want my money. Try and fix this before you leave St. Louis, and you will much oblige me, I assure you. After getting this off our hands and thoughts we can make money on claims. I will send you some new cases in Louisiana, and, with others which you can pick up, we may make something worth talking about. Do not neglect Council Grove, however; have that business carefully attended to, and if you can't raise money for attorney's fees, give them contingent fees, which will induce them to work the harder.

Truly, &c., C. E. RITTENHOUSE.

If you see our friend Dawson, impress him with the great importance of observing all the points mentioned by me in getting up claims.

"The commission for the settlement of claims against Mexico and the United States respectively stands adjourned until the 15th inst., when the sittings will be resumed, and it is — hoped, with more activity than has heretofore marked the progress of this tribunal. It is very evident now, with only four months remaining of the time fixed by the treaty for the duration of this commission, that it will be impracticable to decide a fourth part of the pending cases. The Senate, at the last session, took no action upon the new convention, extending the time another year, and if it should fail, upon reassembling, to ratify this extension, all the labor thus far expended would be entirely lost, as the terms of the treaty forbid any allowance until all the claims are passed upon. Therefore the parties who have received awards and the claimants whose cases have yet to be considered are equally interested in pressing the Senate to a favorable decision on the pending convention."

Q. Give the year and month when you resold to Porter your interest in the Hamilton claim, and for what consideration, and state further whether or not, at that transfer or resale, you and Porter finally adjusted your matters concerning all claims between you.

(Objected to by counsel for Rittenhouse, because the question asserts that witness has testified a purchase of a portion of the Hamilton claim from Porter, whereas it nowhere appears in evidence that witness acquired any right, title, and interest in said claim from Porter, and that no transfer of any interest in this claim was a moving cause to him in making the relinquishment.)

A. In September, 1884, Dr. Porter, wishing to obtain entire control of the Hamilton claim, for the purpose, as I understood, of a sale of his entire interest therein, which was twenty-five per cent., I think, of the original amount as alleged by him, of which I was originally to have one-half, importuned me to relinquish my interest in this claim entirely to him, in which, as I subsequently learned, he sold his intire interest to one Mr. Black for $500. I made no resale; I merely relinquished it. Dr. Porter and I had an equal

interest in the Hamilton claim at the time of my relinquish-
163 ment of my interest in the Mexican claims, and as an inducement for said relinquishment he represented that I would obtain a larger amount from the Hamilton than I would by retaining an interest in the Mexican cases, and in subsequently relinquishing my interest in the Hamilton case, and to make a final settlement of all still existing claims which he had placed in my hands for prosecution. He proposed to relinquish all his interest in said balance of claims, all of which appear to be worthless, and from which I have never yet obtained any return, and am not likely to, from the character of the claims.

Q. If the Hamilton claim had been favorably decided between September 2, 1872, and March, 1874, who would have been entitled to the fees?

A. As our joint interest existed, I suppose the interest would have been divided equally, according to the original agreement.

Q. In April, 1874, what became of your entire interest in the Hamilton claim?

A. I cannot give a definite answer to that question, as our interest continued to September, 1874.

Q. What became of it in September, 1874?

A. I relinquished my interest, as stated.

Q. Were you a witness in a suit pending in St. Louis between Dr. Porter and R. H. Musser and Mrs. Standish?

A. I do not recollect that I was.

Q. Can you say whether or not in the deposition you gave in that suit you testified that you had no interest whatever in the cases of Conrow, Parsons, and Standish?

A. I am at present unable to affirmatively answer that question.

Q. Look at the paper I now show you and tell me in whose handwriting is the body of the same, and whose signatures, respectively, are attached thereto; and state further whether or not this was the last agreement you ever had with Porter, and was not the same executed for the purpose of finally settling all differences then existing between you and Porter growing out of all claims in which you were interested.

A. The paper is in the handwriting of the witness, Joseph Davidson, and the signatures thereto are those of Dr. Porter and myself. The amount mentioned therein of $46.90, which was to have been paid by me in part payment of the note of $75, held by Mr. Dunn, was paid instead to Dr. Porter himself on his promise to repay the amount, with the balance necessary to take up said $75 note held by said Dunn. I only relinquished my interest in the Jenkins and Martin claims, Porter agreeing to settle with my associate counsel, Judge Embry, and also any interest that John H. Ferry claimed in said fees. This was not final, as our final settlement was made in September, 1874.

Q. Was the final agreement in September, 1874, in writing?

A. I do not now recollect whether any actual writing took place; but the settlement was made with me by John A. Rollins, who was employed by Porter for that purpose.

(Paper offered in evidence, and marked Exhibit C. E. R. No. 3.)

164 EXHIBIT C. E. R., No. 3.

Memorandum that Dr. R. H. Porter and C. E. Rittenhouse have this day agreed on all matters of claims in which they are jointly interested as follows: That the money received in fees by R. H. Porter on the Jenkins and Martins claims is to be kept by him in full settlement of all expenses incurred by either party in procuring and prosecuting all claims now on hand in which they are jointly interested, and upon any unsettled claims (including the Jones and Stone claim now allowed for $1,150) which may be hereafter settled the fees shall be equally divided — them, excepting those claims in which R. W. Dawson is interested; that the note of said Porter for $75 and interest upon which said Rittenhouse is endorser, due to and held by E. T. Dunn, shall be paid as follows *by:* Said Rittenhouse is to pay on it the $46.97, fee due said Porter on the claim of J. D. Adams, and said Porter will pay the balance of said (Dunn) note on or before the 15th of next May, and said Rittenhouse will pay to said Porter one-third of the fee when collected upon the Jones and Stone case herein referred to as allowed for $1,150.

Subscribed to by both parties this 17th day of April, 1874.

R. H. PORTER.
C. E. RITTENHOUSE.

Witness:
JOSEPH DAVISON.

Q. Under the agreement of April, 1874, you were to pay to Porter ⅓ of the fees of the claim of Jones and Stone. Was that claim allowed, and did you ever pay Porter his one-third?

A. I believe one claim of theirs was allowed in which his interest was settled in the final arrangement in September, 1874; he then relinquished all existing interest between us to obtain my relinquishment of my interest in the Hamilton case.

Q. Look at the paper I now hand you and say whether or not Mr. Huyck ever presented this bill to you on behalf of Porter for payment in accordance with the agreement of April, 1874, and especially for the one-third fees of $1,501, allowed by the Government on the 6th of March, 1874, and which was collected by you, and whether you ever paid the same.

A. Mr. Huyck did present some bill from Dr. Porter for his alleged interest subsequently to our final settlement in September, 1874, in which his interest in this Jones and Stone case was included, and the $75 held by Mr. E. T. Dunn of R. H. Porter still remains unpaid.

(Paper offered in evidence, and objected to as not proven. It is marked Exhibit C. E. R. No. 4.)

165 EXHIBIT C. E. R. No. 4.

C. E. Rittenhouse to R. H. Porter, Dr.

To one-third of the fees received on the claim of Jones and Stone, allowed for $11.50; fees, $575; one-third thereof	$191 67
Less balance due on note of Porter for $75, endorsed by Rittenhouse, of which $46.97 was to be paid by Rittenhouse from the fee due to Porter on the claim of I. D. Adams	28 03
	$163 64
Interest from March 6th, 1874	51 54
	$215 18

Q. State, if you please, in exact sums, dollars and cents, how much money you and Mr. Peugh, or either of you, spent in connection with the claims of Parson, Conrow, and Standish, and for what purpose.

A. I paid Dr. Porter $300 cash, which he represented he needed to get up the necessary evidence to sustain the claims of Conrow, Standish, and Parson, in which he had then sold one-half of his interest, of which $300 Mr. Peugh subsequently settled with me for his one-half. In addition to the said $300 we each expended some small amounts for obtaining translation of the Spanish testimony obtained by Colonel McManus as evidence in these cases.

Q. Is that all?

A. I believe so.

Q. Please fix the aggregate sum.

A. I expended about $156 or $157.

Q. What labor or services did you render in either of the three cases before mentioned, with a view to a final prosecution of the same?

A. Mr. Peugh and myself employed Chas. H. Winder as our attorney to prosecute the claims before the commission, which action was subsequently approved by Porter; and Musser and Mr. Peugh and myself, while these cases were pending before the commission, had necessary consultations as to their management, and what might be necessary to obtain a favorable result.

Q. What was your contract with Winder?

A. To allow him a contingent fee of $1,000.

Q. When did Winder cease to become the counsel for you and Mr. Peugh in these cases?

A. I was not aware that he had ever ceased to be our counsel.

Q. Did you inform Winder September 2, 1872, that you had parted with your interest to Porter in the claims in controversy?

A. I have no recollection of informing him at that time, but may have subsequently done so in consultation as to my still claiming an interest therein.

Q. When did Porter employ Winder, or ratify the contract, as you term it, that you had made with him?

166 A. I am not aware of the exact date; have no recollection whatever; but subsequently to our employment of him, never heard it disputed.

Q. Are you positive that R. H. Musser was in this city and had an interview with you, wherein you say he ratified the contract made by you with Winder previously to the rendering of the awards in these cases?

A. I am unable to state what year it was that he was here; but I had several interviews with him, and have no recollection of his ever having objected to the agreement of Peugh and myself with Mr. Winder, which I think he had previously indorsed in the correspondence between him and myself.

Q. Can you say whether your interviews with Mr. Musser touching this subject were before or after these awards were made?

A. Both before and after, and he never raised any objection to either Mr. Peugh or myself receiving any interest therein until after the awards were made, when, although he did not positively raise any objections in my last interview with him in Washington, his whole manner was changed, and he was very reticent with regard to his then existing views and intentions.

Q. Are you as positive and certain on having these interviews with Musser, before the awards were made, as you are of any other fact to which you have testified?

A. I can say I think so.

Q. Can you give the names of the witnesses whose testimony was procured by McManus, which it was necessary to have to prove these cases?

A. I cannot give their names, but always understood that they were the Mexican soldiers under the command of Col. Sanchez who did the shooting of these parties, by his command. I don't think that I would know the names if I were to hear them.

Q. State, if you please, whether or not all communications ceased between you and Musser, March, 1872, and was not that the time Mr. Musser called to his assistance Messrs. Pike and Johnson to take charge of these cases?

A. Our harmonious intercourse ceased about that time, or about the time he employed Messrs. Pike and Johnson.

Q. Can you now say that the affidavits furnished by McManus as evidence were or were not refused both by the commission and the umpire?

(Objected to, as no cross-examination on the evidence-in-chief.)

A. I never understood that the said testimony was refused by the commission or umpire until after the awards were made. I desire here to correct my statement previously made, by saying that my testimony as to the affidavits furnished by McManus was given on information, and not on my personal knowledge.

167 Redirect by Mr. DEWEES:

Q. State whether or no you received any part or interest in the

Hamilton case from Porter in consideration of your relinquishment to him of the Mexican cases.

A. Not a dime.

Q. State whether or no there was any other consideration for the relinquishment to Porter made by you in the Mexican cases, except the release of the one-half of the alleged expenses in the Hamilton case, claimed by Porter to be due by you to him.

A. None whatever.

Q. In the letter of September 2, 1871, from you to Porter, marked Exhibit C. E. R. No. 2, you say: "I have had to put Peugh's paper in suit, and want my money." Does this refer to paper given by Peugh to you on account of his interest in the Mexican claims, or was it for other purposes?

(Objected to, as leading.)

A. As I now remember, it referred to that claim on Peugh entirely.

Recross-examined by Mr. JOHNSON for Porter:

Q. Mr. Rittenhouse, as a long experienced banker and a business man, do you wish to be understood as saying that because "not one dime" passed from Porter to you in the Hamilton matter, therefore there was no consideration for the sale, transfer, or assignment, whichever you may please to term it?

A. That is my present opinion.

C. E. RITTENHOUSE.

Sworn to and subscribed before me, this 20th day of March, 1880.

JNO. CRUIKSHANK.

Examination adjourned to Monday, the 22d day of March, at 12 m.

J. C.

CHARLES H. WINDER, a witness heretofore produced and sworn, is now examined in rebuttal, as follows:

I don't know Mr. Penn Clarke or Wm. Penn Clarke. I never heard of him until yesterday. There are two or three points in Mr. Peugh's testimony that do not correspond to my understanding of them, and I now proceed to take them up in their order and explain them so far as my understanding is concerned.

1st. I do not know whether I understand him right in regard to what he has said in relation to preparing the memorials and procuring testimony. I have already stated in my examination-in-chief in my own case that I did not procure or assist in procuring any testimony, nor did I prepare any memorials. What I did say was to the effect that the memorials and the testimony which Mr.

168 Peugh had in his possession were defective in certain particulars, and that I pointed out their defects to Mr. Peugh, and in regard to the memorials these defects were noted, and with regard to the affidavits I prepared some three or four of them, and

they were transmitted, as I suppose, to Mr. Musser, and were duly returned to Mr. Peugh; whereupon I prepared my brief and first argument; that was all my agency in that matter.

With regard to Mr. Penn Clarke's matter, I never heard anything about it until yesterday. I received a letter from Mr. Peugh on the 24th day of February, 1879, the letter bearing date 23d, the day before. I immediately replied to it, and stated substantially that I did not propose to enter into the arrangement of which he spoke in settlement of these claims; that I had already taken steps to protect my interest. In one paragraph of Mr. Peugh's letter he asks me to send him a release of all my claims in all his cases, the consideration for such a relief stated in the letter being $500. I was a little annoyed at such a request, and as I had long made up my mind never to trouble Mr. Peugh about my claim of $1,000 against him and Rittenhouse, on account of my knowledge of his circumstances, and my friendly relations towards him, and feeling a strong sympathy for him for what I considered to be a most iniquitous persecution of him, growing out of the prosecution of said claims, I stated in my letter that I did not consider that he owed me anything. Mr. Peugh now informs me that this Penn Clarke arrangement occurred some months after that letter by him to me, and replied to by me to him, which shows that I had given no authority for the provision in that agreement which related to me. Until I had received that explanation from Mr. Peugh, I naturally concluded there was an intimate relation between that contract and his letter to me. But I am satisfied now from his statement that that could not be so, considering the dates of the two transactions. I made this statement in order that consistency of my former statements may be understood.

[Q.] In your letter to Mr. Peugh of Feb. 24, 1879, in reply to his of Feb. 23, 1879, you state that you had already taken steps to protect your interest. What do you mean by that?

(Objected, in behalf of Porter, as having been already answered.)

A. I had filed a caveat in the State Department, and had intended to come here and employ counsel to represent me. I think I had been here, but am not positive as to the exact time. I know I had filed my caveat, and that subsequently I did come down, and employed counsel. I did not know how to fix any particular date in my mind, and can't say now. I employed Mr. Luther H. Pike as my solicitor.

CH. H. WINDER.

Sworn to and subscribed before me, this 21st day of April, 1880.

JNO. CRUIKSHANK,
Examiner in Chancery.

169 No. —. Equity Docket.

Original Bill. Filed March 24, 1879.

Supreme Court of District of Columbia, the — day of —, A. D. —.
In Equity.

Between JOHN CHILES, Complainant,
and
RICHARD H. PORTER, SAMUEL A. PEUGH, CHARLES E. RITTENHOUSE, Charles H. Winder, Thomas P. MacManus, Stephen V. White, Sarah M. Standish, Mary A. Conrow, and Stephen K. Parsons, Defendants.

To the supreme court of the District of Columbia holding an equity court for said District:

The complainant complains as follows:

1. He is a citizen of the State of Kentucky, but resident in the District of Columbia for the ten years last past.

The citizenship and residence of the defendants are as follows: The said Richard H. Porter is a citizen and resident of the State of Kentucky; the said Samuel A. Peugh is a citizen of the —— —— —— but a resident in the District of Columbia for the twelve years last past; the said Charles E. Rittenhouse is a citizen of the —— —— ——, but a resident of the District of Columbia for the twelve years last past; the said Charles H. Winder is a citizen and resident of the State of Maryland; the said Thomas P. MacManus is a citizen of the State of Texas, but a resident in the District of Columbia for the five years last past; the said Stephen V. White is a citizen and resident of the State of New York; the said Sarah M. Standish, Mary A. Conrow, and Stephen K. Parsons are citizens and residents of the State of Missouri.

2. In the year A. D. 1869, the complainant being resident in the District of Columbia, and specially engaged in the preparation, presentation, and prosecution of claims to and before the joint claims commission between and of the United States and the Republic of Mexico, organized under the treaty made and entered into by and between said governments on the 4th day of July, A. D. 1868, made known to the said Richard H. Porter the circumstances of the robbery and murder, in the Republic of Mexico, by Mexican soldiery, on or about the 10th of August, A. D. 1865, of Monroe M. Parsons, Aaron H. Conrow, and Austin M. Standish, and the right of the widows and orphan children of said Parsons, Conrow, and Standish to present and prosecute claims to and before said commission against the Republic of Mexico for compensation for the loss and injury inflicted upon them by reason of said robbery and murder of the said Parsons, Conrow, and Standish, respectively. Numerous conversations were had by and between complainant and said Porter in relation to the right of said widows and orphans to present such claims and to complainant and said Porter receiving the employment of said widows and orphans to prepare, present, and prosecute their respective claims before said commission for such com-

pensation for the services rendered in and about the same as
should be agreed upon by themselves and the claimants,
170 said widows and orphans. That said Porter was at the time
holding himself out as a man of means, and the above-mentioned conversation resulted in a parole agreement between complainant and said Porter; that the said Porter, who would shortly be in Missouri on business affairs of his own, should whilst there take the necessary steps to secure for complainant and himself, jointly, from said claimants, respectively, letters of attorney, whereby said claimants should employ and authorize complainant and Porter, jointly, to prepare, present to, and prosecute before said commission their respective claims aforesaid, and agreement as to fees, whereby they would express what compensation they respectively agreed to pay complainant and Porter for the services to be rendered under their said employment.

It was further agreed that said Porter should defray, out of his own means, all and every expense incident to the procurement of said letters of attorney, and agreements as to fees and to the preparation, presentation and prosecution of said claims, and should give all due attention to such procurement and preparation, presentation and prosecution of said claims after their procurement; that complainant and said Porter should be equally interested in the compensation agreed to be paid by said claimants, respectively, complainant to have with said Porter an equal one-half thereof, on consideration of his (complainant's) having first informed said Porter of said robberies and murders and the facts in relation thereto, and the means by which said claims were to be procured for prosecution and were to be established after their presentation to said commission; and further, on consideration of complainant's rendering such assistance as said Porter might, during the prosecution of said claims, call upon him to render in the way of securing the necessary testimony on which said claims should be submitted for adjudication.

Complainant herewith exhibits, in part confirmation of his foregoing statements, copies of two letters of said Porter, marked, respectively, "Exhibit J. C., No. 1," "Exhibit J. C., No. 2," which he asks to be taken and considered as part of his bill of complaint.

The said Porter went to Missouri in the fall of the year A. D. 1869, but because of his fears, on account of his being unacquainted with said widows and orphans, made no direct communication with either of them, and so fearing, he deemed it prudent to enter into an agreement with one Richard H. Musser, a lawyer of high standing in the city of St. Louis, a former companion-in-arms with said Parsons, Conrow, and Standish, and an acquaintance with their respective families; that he, the said Musser, should secure letters of attorney and agreements as to fees from said claimants' widows and orphans for the preparation, presentation and prosecution of their respective claims before said commission by him, Musser, as their attorney; that if he, Musser, should succeed in doing this, he, Porter, would defray, out of his own means, all and every the expenses incident to the procurement of said letters of attorney and agreement as to fees and to the preparation, presentation and prosecution of said claims,

171 respectively, and otherwise aid and assist said Musser in and about the same; and that he and the said Musser in consideration thereof should be equally interested in the compensation agreed to be paid by the claimants, respectively, each to have a full and equal one-half.

The said Porter made and entered into this agreement, which rested wholly in parole with said Musser, without informing him (Musser) of the agreement that existed between him (Porter) and this complainant; but he, after his return to Washington city thereafter, reported to this complainant the making of his agreement with said Musser, the terms thereof, and advised this complainant that he could do no better, and asked that he approve thereof and concur therein, which this complainant then and there did, with the understanding and agreement between him and the said Porter that the division of the compensation that should be paid by complainants should be one-half to said Musser and one-fourth to said Porter and this complainant, respectively.

3. The said Musser duly obtained from Sarah M. Standish, the widow of said Austin M. Standish; Mary A. Conrow, the widow of said Aaron H. Conrow, and Jackson L. Smith, the curator of Stephen K. Parsons, the only child and minor son of said Mosby M. Parsons, their respective letters of attorney, whereby they severally witnessed that they had authorized and empowered him, Musser, as their attorney to prepare, present to, and prosecute before said commission their respective claims against Mexico, also their respective agreements as to fees in writing, whereby they respectively witnessed that they had stipulated and agreed to pay to him, Musser, for and in consideration of the professional services he was to render to them under his said employment, one-half of whatever sum of money should be ultimately awarded to them respectively on their said claims.

4. Under the authority so conferred on said Musser and the said agreements between him and said Porter and said Porter and this complainant the claims of the said Sarah M. Standish, Mary A. Conrow, and Jackson L. Smith, as curator, were duly prepared, prepared, presented to, and the procedution thereof entered upon before said commission, this complainant, the said Porter and said Musser, doing and performing their respective work therein, and each rendering such aid, assistance, and co-operation in and about the same as the said agreements contemplated and required each to render and do.

5. The prosecution aforesaid produced in due course of time awards in favor of said claimants respectively, in Mexican gold dollars, as follows:

Sarah W. Standish	$42,486 30
Mary A. Conrow	50,497 26
And Stephen K. Parsons, who had in the interim obtained his majority and taken charge of his own affairs	50,828 76
Aggregating the sum of	$143,812 32

172 Which by (supplemental) treaty stipulation the Republic of Mexico agreed to pay to the United States in stipulated annual instalments, of which three have been paid and placed by act of Congress of the United States in the hands of the Secretary of State of the United States for distribution.

6. The Secretary of State has paid over to and said claimants have respectively received and receipted to him for one-half of the sums respectively due to them on the first two instalments so paid over *to* the Republic of Mexico; and the claimants have left the other one-halves of said two instalments in the hands of said Secretary of State to be by him paid over to those who shall establish their right thereto as attorneys of said claimants or as the employees or assignees of such attorneys.

But the Secretary of State has not made payment of any portion of the third of said instalments to either of said claimants, or to any one whomsoever, for or on that account.

The Secretary of State has not made payment of any portion of the one-halves of said three instalments so in his hands, to any one as attorneys of said claimants or as employee of such attorney, owing to an irreconcilable conflict that has been brought before him by those claiming title thereto as attorneys of said claimants or as assignees or employees of such attorneys for and in consideration of services alleged to have been rendered by them respectively in and about the preparation and prosecution of said claims before said commission, under and by virtue of alleged employment as such attorneys and as the assignees or employees of such attorneys.

7. This complainant and the above-named defendants, Richard H. Porter, Samuel A. Peugh, Charles E. Rittenhouse, Charles H. Winder, Thomas P. MacManus, and Stephen V. White are the persons who are making claims of right before the Secretary of State to either a portion of or the entire fees in the several cases of said Parsons, Conrow, and Standish.

This complainant understands and believes that the said Porter makes claim for the entire fee of 50 per centum agreed to be paid by the said Mary A. Conrow; that said Peugh and Rittenhouse claim a portion of the fee in each of the cases, Parsons, Conrow, and Standish as employees and assignees of said Porter; that said Winder claims a portion of the fee in each of said cases as employees of said Peugh, Rittenouse, and Porter and as assignees of said Porter; that said MacManus claims a portion of the fee in each of said cases as employee and assignee of said Porter and Winder; that said White claims the entire fee in the said cases of Parsons and Standish as assignee, for valuable consideration paid of said Porter and as assignee for valuable consideration paid of said Musser and of Albert Pike, Robert W. Johnson, and Luther H. Pike partners, under the firm name of Pike & Johnson, who at the request and upon the recommendation of said Musser were employed by said claim-

173 ants in the prosecution of their said claims, it being by said claimants left with said Musser and said Pike & Johnson to arrange between themselves that portion of the fees agreed as aforesaid, to be paid by said claimants should be paid to said Pike &

Johnson by said Musser. That the said White also claims a portion of the fee in the said Conrow case as assignee for valuable consideration paid, of the said Musser and said Pike and Johnson.

8. The claims of this complainant and of the above-named defendants, Porter, Peugh, Rittenhouse, Winder, MacManus, and White, aggregate a greater percentage than the fifty per centum each of said claimants, Parson, Conrow, and Standish agreed to pay for the prosecution of their respective claims, and it must be apparent to the court that all cannot be allowed for the amount claimed by each.

9. This complainant avers it to be true that if the said Porter entered into any agreement with or made any transfer or assignment to the said Peugh, Rittenhouse, Winder, MacManus, or White he acted wholly without authority from this complainant to bind him or his interest in said fees, and wholly without knowledge, information, or belief, as to the same, on the part of this complainant; that this complainant has received no benefit from any such agreements, transfer, or assignments; that they are in nowise binding upon him or his interests, and if binding at all, are so only upon said Porter and his interest, and upon said Musser and his interest, in so far as said Musser having full knowledge of all the facts ratified and confirmed the same.

10. This complainant further avers it to be true that if the said Porter received any valuable consideration from said White for the transfer or assignment the said White alleges that said Porter made to him in the said Parsons and Standish cases, he, the said Porter, has not accounted to this complainant for any of the least portion of said consideration.

11. This complainant further avers it to be true that said MacManus, Peugh, and Rittenhouse never rendered any services in and about the prosecution of said claims that entitles them or either of them to have and receive any portion of either of the fees stipulated and agreed to be paid by said claimants respectively, and are literally seeking to secure a large sum of money without paying or giving the least consideration therefor.

12. This complainant charges the said Porter with having been guilty of the basest fraud throughout his connection with the preparation, presentation, and prosecution of said claims, and of having deliberately attempted, with lying and deceit, to swindle every one with whom he has had dealings, in connection therewith, particularly with this complainant, whom he is now attempting to cheat, wrong, and defraud of his entire interest in said fees by pretending to ignore this complainant as ever having had any connection with said cases or interest in said fees.

The premises considered, this complainant prays that the above-named defendants, Porter, Peugh, Rittenhouse, Winder, MacManus, and White be required and compelled to answer fully and specifically the allegations of this the complainant's bill, setting
174 forth precisely what their respective claims to said fees or portions thereof, on and upon what agreements and services they are based; that an account be stated between this complainant

and each and every of said defendants, and between them respectively; that the partnership that existed between said Musser and said Porter in regard to the preparation, presentation, and prosecution of said claims, and in regard to the fees agreed to be paid to said Musser on account thereof, and the right of this complainant to participate therein by reason of this aforementioned agreement with said Porter, be declared; that the conflicting claims of right and equities of and between this complainant and said defendants, Porter, Peugh, Rittenhouse, Winder, MacManus, and White, be adjusted and settled by this honorable court, and that it by its decree adjudge and declare what portion of said fees are to be paid over to and received by this complainant and each of said defendants, Porter, Peugh, Rittenhouse, Winder, MacManus, and White, respectively; that said defendants, Porter, Peugh, Rittenhouse, Winder, MacManus, and White, and every of them, their agents, servants, and attorneys, may be prevented and restrained by order and injunction of this honorable court from receiving said fees, or any portion thereof, or trying to obtain possession thereof until the further order of this honorable court. And for such other and further relief in the premises as he is entitled to and as the nature of his case may require.

That due process may issue against every of said defendants, requiring them to appear and answer the exigency of this bill.

And the complainant will ever pray the defendants to the bill on Richard H. Porter, Samuel A. Peugh, Charles E. Rittenhouse, Charles H. Winder, Thomas P. MacManus, Stephen V. White, Sarah M. Standish, Mary A. Conrow, and Stephen K. Parsons.

JOHN CHILES.

JAMES W. DENVER,
LUTHER H. PIKE,
Complainant's Solicitors.

DISTRICT OF COLUMBIA, } *sct:*
County of Washington, }

I do solemnly swear that I have read the foregoing bill by me subscribed, and know the contents thereof, and that the facts therein stated upon my personal knowledge are true, and that the facts therein stated upon information and belief I believe to be true.

JOHN CHILES.

DISTRICT OF COLUMBIA, } *ss:*
County of Washington, }

Sworn to and subscribed before me, this 22d day of March, 1879.

A. C. RICHARDS, *J. P.* [SEAL.]

In the Supreme Court of the District of Columbia, the 24th day of March, 1879.

JOHN CHILES, Complainant,
against
RICHARD H. PORTER *et al.*, Defendants. } No. 6703 Eq. Doc.

The President of the United States to Richard H. Porter, Samuel A. Peugh, Charles E. Rittenhouse, Charles H. Winder, Thomas P. McManus, Stephen V. White, Sarah M. Standish, Mary A. Conrow, Stephen K. Parsons, defendants:

175 You are hereby commanded to appear in this court, at its first special term, occurring twenty days after service of this subpœna, and answer the exigency of the bill this day filed, and entitled as above, under pain of attachment, and such other process of contempt as the court shall award.

Witness:

D. K. CARTTER, *Chief Justice.*

R. J. MEIGS, *Clerk.*
By R. J. MEIGS, JR., *Ass't Clerk.*

Memorandum.—That the defendants herewith served are to enter their appearance in this suit, in the clerk's office, on or before the day at which this writ is returnable; otherwise the bill may be taken for confessed.

The defendant is hereby restrained, as prayed in the within-mentioned bill, until further order, to be made, if at all, after a hearing which is fixed for the 29th day of March, 1879, of which take notice.

By the court: MACARTHUR.

Summoned and served notice of injunction on def'ts, Richard H. Porter, Charles E. Rittenhouse, Thomas P. McManus, March 24, 1879, and Samuel E. Peugh, March 25, 1879. Not to be found, the others. March 26, 1879.

F. DOUGLASS, *Marshal.*

176 EXHIBIT J. C., No. 1.

NEW YORK, *Decem. 27th*, 1869.

C. R. H. MUSSER.

DEAR SIR: I have done everything in my power to raise money, but have failed up [to] the present time, but will certainly have money about the 1st of January. I have had the promise of money, and will certainly get some. I will not come to St. Louis until I raise money, and money I will have; as soon as I can get money, that soon will send you two or three hundred dollars. It is impossible to raise money on the claims until the proof is made and before the commission; when that is done, if the proof is good, we can raise all the money we will want. Maj. Chiles, who first told me about the claims, contends he should have an interest. I have tried

several parties, and find I can make a good arrangement with him and his partner, Col. Gist, who is at Washington, and a particular friend of Wadsworth, one of the commission; we will have to give them one-half of what we are to get. They to attend to everything at Washington; we are to get the proof; but they are to furnish one-half of the money for all expenses. Chiles knows of some proof, and will attend to taking it himself; he has had some correspondence with some friend at Monterey, Mexico; he tell- him that the report there is, that Standish had several thousand dollars of exchange on England; find about this. Get the proof of the black boy of Conrow as soon as you can. Can't you write out the deposition for all the witnesses, send them and have them sworn to. Send on the petition in the other two cases, so they may be deferred. The memorials will be written out by Gist. Write out a contract, as I have suggested, giving Gist and Chiles one-half of what we are to get. Send it to me at Washington, 273 F street, then these gentlemen will raise their portion to pay expenses as soon as the proof is made and the claims are before the commission. Then they propose to raise 4 or 5 thousand dollars on the claims. Col. L. A. Pindall, of Napolion, Arkansas, is a good witness, I understand. The Secre. of State has issued an order that all claims must be made out by the 30th of March, 1870. I am slow, but I am all the time trying to raise money, and certainly will have some to send you before long. Let me hear from you as soon as you can.

Yours, truly,

R. H. PORTER,
273 F Street, Washington.

"EXHIBIT J. C., No. 2."

WASHINGTON, D. C., *May 5th*, 1872.

DAVID A. QUIESENBERRY, *Richmond, Mo.*

DEAR SIR: I had hoped that it would not be necessary to trouble you again with a letter, but finding I am not understood, and I see you do not understand this claim business, or you would not have done me the injustice you have yourself and Mrs. Conrow. Your letter to me 13th March, 1872, you refuse to send me the power of attorney, because Mrs. Conrow had given Musser a power of attorney, and made a contract to give one-half of the claim to prosecute it; but she sends Pike and Johnson a power of attorney, revoking all others. In your same letter you advise me if I have Musser's power of attorney properly endorsed, that they can't be re-
177 voked, because they are coupled with an interest, now accept your proposition, that a power of attorney coupled with an interest. Then moneys have been expended—can't be revoked. On the 17th of April, you write to Pike and Johnson to take charge of all this business, and not to allow me to wrong a widow and children. Referring to a letter from Hon. Cummings, now the only excuse I can make for you (for I believe you are honest) is, that you know nothing about this business. Had Cummings been the friend you supposed him to have been, he would have taken pains and understood something about this business before writing to you. I

wanted him to call and confer with Pike and Johnson, and also proposed to bring Winder to his room, that he might explain all about this claim, but he refused to listen or have anything to do with it.

The only wrong I could do your daughter and her children would have been to neglected this claim which Musser had done and I will prove before getting through. If you had sent me the power of —— I wrote for I could not have wronged Mrs. Conrow, for I could not have collected the money, though commission might have allowed her ever so much. The only reason I wanted it was to protect myself against this man Musser, who had imposed upon your daughter as well as myself, which I propose to prove.

No money can be drawn by any agent until after the claim is allowed, the draft issued; then the power of attorney must give the No. of draft, etc. I propose to show how Musser ever came to know anything about this claim. In the spring and summer of 1869 I was in Washington, rooming in the same building with Maj. John Childs. After the commission had been appointed to settle all claims between U. S. and Mexico, he suggested that a claim would be made against Mexico for the killing of Gen'l Parsons, Standish, and Conrow. We talked the matter over and over and at last concluded to see if we couldn't get the claims. Childs had seen a letter written to a gentleman in New York from the U. S. consul at Monterey giving an account of the murder. We went to New York to see this gentleman; he was absent; so I wrote to the consul and received in due time a copy of the letter to the gentleman in New York; from there I went to Saint Louis, on my way to see Mrs. Conrow and the other claimants, but while there I concluded that I would associate some lawyer in Saint Louis with me, as I had a good deal to attend to; as I had known this man Musser when a boy, and being suggested to me by a friend that he was poor, I concluded to befriend him, called to see him; told him about the commission and about these claims and proposed that if he would get these claims for me, that I would prosecute them here, also told him to make the contracts, all of which he did well, except he neglected to put my name in the power of attorneys and contracts, and used his own, which he explained by saying he was a lawyer and had some pride to appear as an attorney in the claims that he would give me the papers with proper indorsements, or anything I might require to show my interest on those claims; he was to give me all the assistance he could in the way of taking testimony; I was to be to all expense for the time, and attend to the claims at Washington, then was to give him one-half of the fees, etc., still believing he meant right. I gave him money to

178 get up the proofs, and did everything in the premises that could be done without going to Washington city; finding, however, that it was costing me more than I anticipated, and being disappointed about money, I suggested that I, perhaps, might be able to raise money on the faith of the claims by giving me an interest in it, as it had been put into shape and the proof most all taken, which he agreed to; on the 4th day of July, 1870, he gave me all the powers of attorney, contracts properly indorsed, and also letters showing my interest and authority for doing the thing I had

proposed. I came here; found I could not raise any money, but made a contract with Rittenhouse and Peugh to assist me in prosecuting their claims, and also borrowed $300 dollars, to be paid in 60 or 90 days; went to New York to see if I couldn't raise the money then, but failed. I forgot to remark I sent Musser $125 of the $300; as the amount was so small, I made it an individual matter; and also as I had promised to furnish the money to prosecute their claims as soon as this man was informed the claims had been filed (in his ignorance thinking that was all that had to be done), and that he could get along without me, he wrote to Rittenhouse falsehoods; agreed to recognize the contract I had made with him and Peugh, but stated that I had no further interest in the claims, and that he would not recognize me, and urged of Rittenhouse to do the same; when I explained to Rittenhouse this man's position in the claims he refused to have anything more to do with him, and refused to correspond with him, just what I expected you to do when you were informed of his attempted villainy to the man who was trying to be his best friend; then I determined to have nothing more to do with this man.

I went to St. Louis; proposed to give him up the claims if he would pay me the money I had expended; if we couldn't agree to leave it to arbitrators; to this he would not agree; I then returned to Washington, feeling I would give up the claims, but upon second thought of the injustice it would be doing all the parties interested; so I concluded to go on and do the best I could, depending upon the claimants to do me justice. I still believe they would, if they could understand all the facts; when I sent you the printed argument and asked for the power of attorney, had you written to Musser and inquired the condition of these claims you could have seen he knew nothing about them, and had not known anything of them for over 18 months; I have expended some $2,500 or $3,000 in prosecuting these claims; one-third of this will fall to the Conrow claim; now as you seem to be determined to control this business, I am willing you shall do so, if you will pay me the money I have expended to put the claim before the commission to the best advantage; I then will withdraw from the claim and let you employ who you please; all has been in the way of proof and argument that can be done, as the commission gave claimants to the 1st of April to introduce proof, therefore none will be allowed to introduce any more now; as I am the only one who has expended any money in this claim I will not allow you to put any one over me; all I ask is to be able to control one-half of this claim. If I have stated the truth, you, as an honest man, must acknowledge that I have a right to do that; I am sure that
179 Pike and Johnson know that this man has not written them the truth, for when I showed them the power of attorney, with the substitution, they were perfectly surprised because he had written that he had done so. I can prove all I have said by the powers of attorney letters, written by Musser, good and honorable witnesses. Now, I have given you the facts connected with this business; I claim to have built up, given existence to this claim; given my time and money; made it what it is and at a time that

no one else could be gotten to risk one dollar in it, for I tried faithfully here and in New York; but for me Mrs. Conrow would not have a claim before the commission; if she gets anything out of this she will be indebted to me, and me alone, not to you, Musser, Pike & Johnson, or any one else. My perseverance, energy, and money have put this in shape and before this commission am I at this hour, and under these circumstances to be set aside and give the management of this to others, you certainly don't mean this; the only parties interested in this is Mrs. Conrow and her children and myself. I am more interested than they are because of over two years' attention, labor, and the expenditure of a large amount of money; the authority I have asked for can't place me in a condition to wrong Mrs. Conrow, for if she gets judgment the draft will be made payable to her; it only protects me from a man who has betrayed my confidence, and will not do to trust; he has misrepresented me and all the facts connected with this claim; he has neglected the claim, and but for me the claim would have been dismissed from the docket long since. I don't beg this authority, but claim it as a right, holding the power and contract given to Musser, having given my time and money to this business, employed attorneys to assist in the prosecution of this claim, made myself liable for fees. I expect to be protected, having done the best I could for this claim and the interest of Mrs. Conrow and children, and as our interest is mutual I can't but feel that when she comes to know this though that she will stand by me, as I have tried to do so much for her. There is no danger but that I will do justice to that man Musser, for I will bind myself, if there is anything ever comes from this claim, to pay him more than any two disinterested and honest men will say I ought to pay him. There are some things you must know: 1st, that a claim cannot be prosecuted by a lawyer living in St. Louis; that you must know that Musser has never been here, nor has he ever had any one employed until since this claim has been made up, proof and argument filed, the case closed and referred to the commission; he has not given the case that attention that he promised in his contract; he has forfeited his contract with me. I have done everything I promised and that could be done for the claim. I hold that justice, and by every principle of right, you should know no one else in this business but myself; for these reasons I expect you to undo what you have done and put me in a condition to protect myself. I will wait your answer before taking other steps.

Respectfully, yours, R. H. PORTER.

180 In the Supreme Court of the District of Columbia.

CHILES
vs. } Eq. No. ——.
PORTER *et al.*

The separate answer of Richard H. Porter to the bill of complaint of John Chiles, in chancery exhibited.

This respondent, saving all exception to the manifold errors and

uncertainties in said bill contained, for answer thereunto, or unto so much thereunto as he is advised it is necessary or material for him to make answer unto, answering, says:

1. That some time in the year 1869 I had a number of conversations with the complainant. In some of those conversations I made allusion to prosecuting the claim of Standish and others. In the course of some one or more of the conversations referred to above said Chiles led me to believe that Judge Gist had gone out to look after these claims, with a view of prosecuting them to judgment. Resting under this belief, I gave no further thought or attention to the claims until some time in the fall following I met Judge Gist in the city of Washington, when I made inquiry of him as to whether he had succeeded in obtaining the said claims to prosecute for the parties. He then and there informed me unequivocally that that he had not been after them; that he had been to Texas, and not to Missouri. He however gave me certain information from which I fully made up my mind to go and get the claims, which I did. I had at one time some conversation with Chiles about my employing Judge Gist. This conversation occurred long before I had obtained the power of attorney. It was simply an ordinary conversation, without reaching any conclusions. Nothing whatever was said in that conversation, at any other time or place, that would in the slightest degree give Chiles to understand that I intended at any time [to] employ him in the matter, or even give an interest in the avails, or even pay him for any purpose. After the conversation with said Chiles he (Chiles) wrote to the parties for the purpose of getting the claims himself to prosecute. I never gave him to understand that I wanted his services in any manner in prosecuting these claims. I was satisfied he knew nothing, and could not in any way assist me in preparation or prosecution of the claims, as he was not a lawyer, and incompetent to prepare papers or arguments to be presented.

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2. I never represented to said Chiles that I was a man of large means; on the contrary, said Chiles knew that I was not possessed of large means. Said Chiles was fully aware of the fact that I had a claim against the Government, and was depending upon that for means, in which I failed, and which he knew also.

3. I did go to Missouri in the fall of 1869 to look after and obtain the claims mentioned. I engaged R. H. Musser, Esq., to obtain for me the power of attorney, he being recommended to me by Col. Renick and Gen. Shields.

4. In August, 1870, I met Mr. Chiles in the city of New York, when, after some ordinary conversation, I told him I had the power of attorney; I proposed to him, as I had done to several others, that if he would furnish the money I would do the work of getting together the testimony, for the use of the money I would divide my fees. Said Chiles at once declined the offer, and said he had no money himself, and could not obtain it from any one. Thus matters rested. From that time until the umpire gave a judgment in 1875, I never spoke a word to Chiles upon the subject of the claims, nor he to me, although I met him frequently during that period.

The said Chiles knew that I had employed an attorney. There never was any agreement made by me, in writing or otherwise, to employ said Chiles; he was no use to me; he could do nothing to aid or assist me in the matter. The idea of employing has no foundation in fact or reason, and has no existence save in the imagination of his own mind. The letter produced, written by me to said Musser, was written before I had anything to do with the claims; after I succeeded in getting the claims I employed counsel who could render me assistance in the matter. It is the first time that I ever heard that Chiles ever pretended he had a claim against me. He never rendered any service in any manner in connection with these claims. The last conversation I had with said Chiles was in August, 1870, in New York, when he declined to have anything to do with said claims, on the ground he had no money and could not raise any. And it is only now that said claims are about to realize something that this pretended claim is made by said Chiles. The said Chiles has no interest in or lien upon the judgment; he has no contract and never had one with me touching the fees in those cases; never was employed by me for any purpose in connection with said claims; I never agreed to pay or give him a single cent from the avails arising from said claims; said pretended claim is gotten up for the purpose of hindering and causing delay in obtaining the fees due me; that said Chiles has no standing in court of equity for relief. If said pretended case be sustained anywhere, his remedy is in a court of law.

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Having answered, &c., prays that said bill be dismissed, &c.

R. H. PORTER.

Sworn to before me March 29, 1879.

R. J. MEIGS, *Clerk*,
By M. A. CLANCY,
Ass't Clerk.

In the Supreme Court of the District of Columbia, the — day of April, 1879.

JOHN CHILES, Plaintiff,
vs.
RICH'D H. PORTER *et al.*, Defendants. } No. 6703. Equity Docket 19.

On motion of the plaintiff, by Mr. Luther H. Pike, his solicitor, it is ordered that the defendants, Stephen V. White, Charles H. Winder, Sarah M. Standish, Mary A. Conrow, and Stephen K. Parsons cause their appearance to be entered herein on or before the first rule day, occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the court: MACARTHUR, *Justice.*

True copy. Test: R. J. MEIGS, *Clerk.*

In the Supreme Court of the *United States*, the — day of May, A. D. 1879.

Between JOHN CHILES, Plaintiff,
and
RICHARD H. PORTER *et al.*, Defendants. } No. 6703. Equity Docket 10.

The plaintiff hereby joins issue with the defendant, Richard H. Porter, and will hear the cause or bill and answer and testimony of witness against him, the defendant Porter.

JOHN CHILES,
By L. H. PIKE.

In the United States Supreme Court of the District of Columbia, the 10th day of June, A. D. 1879. In Equity.

Between JOHN CHILES, Plaintiff,
and
RICHARD H. PORTER *et al.*, Defendants.

183 This cause coming on to be heard at this term of the court, upon the motion of the plaintiff for a decree *pro confesso* against the defendants, Thomas P. MacManus, Samuel A. Peugh, and Charles E. Rittenhouse, and it appearing to the court that although said defendants were, on the 24th day of March, A. D. 1879, duly subpœnaed to appear and answer the exigency of plaintiff's bill, filed herein, they have wholly failed to answer said bill, or otherwise plead thereto, and that the only one of said three defendants who has entered his appearance herein is the same Samuel A. Peugh, it is thereupon, this 10th day of June, A. D. 1879, ordered, adjudged, and decreed that the matters and things stated and alleged in said bill of complaint be taken as confessed against the said Thomas P. MacManus, Samuel A. Peugh, and Charles E. Rittenhouse.

By the court: MACARTHUR, *Justice.*

CLERK: Please strike out *pro confesso* order as against MacManus upon his filing within answer, duly verified.

LUTHER H. PIKE,
Att'y for Chiles, Compl't.

Washington, June 13, 1879.

In the Supreme Court of the District of Columbia.

JOHN CHILES, Complainant,
vs.
RICHARD H. PORTER *et al.*, Defendants. } No. 6703. In Equity.

The separate answer of Thomas P. MacManus, one of the above-mentioned defendants, to the bill of complaint of the above-named complainant.

The said Thomas P. MacManus, saving and reserving to himself all manner of benefit or advantage of exception or otherwise

that can or may be taken to the many errors, uncertainties, and imperfections contained in said bill, for answer, says:

I. That he has no knowledge of the facts alleged in complainant's said bill in support of his alleged claim, and, therefore, does not admit but denies the truth of the same and demands strict proof thereof.

II. That on or about the 21st day of April, A. D. 1874, this respondent entered into a written agreement with the defendants, Richard H. Porter and Charles H. Winder, the duly authorized agents and attorneys of the said claimants, Standish, Conrow, and Parsons, whereby the said Porter and Winder, as such agents and attorneys, undertook and agreed by and with this respondent, in consideration of his procurement of certain testimony in support of said claims before the commission organized to adjudicate the same, to pay him the one-fifth of the whole fees agreed to be paid by the said claimants for the recovery of their said claims, which said fees so agreed to be paid by said claimants was the one-half of the entire recovery in the said several cases. The said claim of this respondent is more fully set out and exhibited in his bill of complaint in cause number 6382, now pending in this court, wherein this respondent is complainant and Mildred Standish *et al.* are defendants, in which cause a copy of the said written agreement is made an exhibit, and to which said cause reference is hereby made, and it is prayed may be taken as a part of this answer.

This defendant duly performed all and singular the re-
184 quirements of said agreement on his part, and has received no part of the fee or compensation therein agreed to be paid, and the same is now justly due and payable to him out of the said awards.

III. At the time this respondent entered into his said agreement and performed the services therein stipulated to have been performed by him in the procurement of said testimony he had no knowledge of the existence of the claims set up by complainant in his said bill, and the said complainant did not make or file any such claim or demand, or notice thereof, either before the said joint commission or in the Department of State of the United States, until after the recovery of the said several awards.

IV. That, further answering said bill of complaint, this respondent says that he is advised, and so avers, that the matters and things alleged in said bill of complaint do not entitle said complainant to any relief from a court of equity.

Therefore, respondent humbly prays to be hence dismissed, with his reasonable costs and charges in his behalf sustained.

THOMAS P. MacMANUS.

M. J. SOUTHARD,
TH. JESUP MILLER,
Sol'rs.

I, the said respondent, Thomas P. MacManus, being first duly sworn, depose and say that I have read the foregoing answer by me subscribed, and know the contents thereof, and that the facts therein

stated, upon my personal knowledge, are true, and that the facts therein stated, upon information and belief, I believe to be true.

THOS. P. MACMANUS.

Sworn to before me and subscribed in my presence this 13th day of June, 1879.

R. J. MEIGS, *Clerk*,
By R. J. MEIGS, JR., *Ass't*.

In the Supreme Court of the District of Columbia.

JOHN CHILES, Complainant,
vs.
RICHARD H. PORTER *et al.*, Def'ts. } In Equity. No. 6703.

The separate answer of Samuel A. Peugh, one of the above-named defendants, to the bill of complaint of the above-mentioned complainant.

The said Samuel A. Peugh, saving and reserving to himself all manner of benefit or advantage of exception, or otherwise, that can be taken to the many errors, uncertainties, and imperfections in said bill, for answer says:

I. That he has no knowledge of the facts set forth in complainant's said bill in support of his alleged claim, and therefore does not admit, but denies, the truth of the same, and demands strict proof thereof.

II. That this respondent, together with one Charles E. Rittenhouse, a defendant above mentioned, did, on or about the 16th day of February, A. D. 1870, enter into a written agreement with the said defendant, Richard H. Porter, the duly authorized agent and
185 attorney of the said claimants, Standish, Conrow, and Parsons, who are made defendants herein, whereby the said Porter, as such agent and attorney, undertook and agreed with this respondent and said Rittenhouse, in consideration of their advancements of money and services in the premises, to pay to them the one-half of the whole amount of the entire fees agreed to be paid by said claimants, which amount so agreed to be paid to this respondent and said Rittenhouse was twenty-five per centum of the recovery in the several claims. This respondent and the said Rittenhouse duly performed all and singular the engagements undertaken by them by virtue of said agreement, and thereby became entitled to the payment of the amount above named. This respondent is advised that said Rittenhouse has released to said Porter his claim under said agreement, but avers that he is entitled to the full one-half of the amount stipulated to be paid to him and the said Rittenhouse, and that the same is now due and payable to him, no part thereof ever having been paid.

The said claim of this respondent is more fully set forth in cause No. 6382, now pending in this court, wherein the said Thomas P. MacManus is complainant and the said Mildred Standish *et al.* are defendants, in and by the answer, cross-bill, and amended cross-bill of this respondent filed in said cause mentioned, written agreement

as an exhibit, to which said cause and exhibit therein reference is here made and prayed to be taken as a part of this answer.

III. That at the time this respondent entered into his said agreement and performed the services in that behalf he had no knowledge of the existence of the claim set up by complainant in his said bill, and the said complainant did not invoke or file any such claim or demand of any notice thereof, either before the said commissioner or in the Department of State of the United States, until after the recovery of said awards.

IV. Further answering said bill of complaint, this respondent says that he is advised, and so avers, that the matters and things alleged in said bill do not entitle the said complainant to any relief from a court of equity.

Wherefore respondent humbly prays that he may be dismissed, with his reasonable costs and charges in their behalf sustained.

SAMUEL A. PEUGH.

BARTLEY & SOUTHARD, *Solicitors.*

I, Samuel A. Peugh, do solemnly swear that I have read the foregoing answer, subscribed in my name, and know the contents thereof, and that the facts stated upon my personal knowledge are true, and that the facts therein stated upon information and belief I believe to be true.

SAMUEL A. PEUGH.

Sworn to before me and subscribed in my presence, this 14th day of June, A. D. 1879.

R. J. MEIGS, *Clerk*,
By R. J. MEIGS, JR., *Asst.*

To the clerk:

We hereby consent to set aside the decrees heretofore entered *pro confesso* in the within case against Samuel A. Peugh, and to the filing of this answer in said cause.

LUTHER H. PIKE,
Sol. for Chiles, Pl'tff.

June 14th, 1879.

186 In the Supreme Court of the District of Columbia, the 16th day of July, 1879.

JOHN CHILES, Plaintiff,
vs.
RICHARD H. PORTER *et al.*, Defendants. } No. 6703. Equity.

The separate answer of Charles H. Winder, one of the defendants in the above-entitled cause, to the bill of complaint of the above-named plaintiff.

In answer to the said bill of complaint, I say:

1. I admit the citizenship and residence of the parties to said cause, as stated in the first paragraph of said bill.

2. I know nothing, and have never had any notice or knowledge

of the several matters and things set out in the second paragraph of said bill.

3. I admit that Richard H. Musser, mentioned in said bill, duly obtained from the defendants, Standish and Conrow, and from Jackson L. Smith, curator of the estate of the defendant Parsons, the several letters of attorney mentioned in said bill, and also the several agreements as to fees, as mentioned in said bill. Each of said letters of attorney contained a power of substitution.

4. I do not admit the truth of any of the allegations contained in the fourth paragraph of said bill; on the contrary I deny the same, and require strict proof thereof.

5. The prosecution of the claim of said Standish, Conrow, and Parsons before the Joint American and Mexican Commission was carried on by me, and not by said Porter, Musser, and complainant, or either or any of them. With this qualification I admit the truth of the allegations contained in the fifth paragraph of said bill.

6. I admit the truth of the allegations contained in the sixth paragraph of said bill.

7. I admit that I am making claim of right before the Secretary of State to a portion of the fees in the several cases of said Parsons, Conrow, and Standish mentioned in said bill. I claim under an agreement in writing, signed and sealed by said Porter, a copy of which is herewith filed as part of this answer, marked "Exhibit C. H. W. No. 1." This agreement, although reduced to writing on the twenty-first day of April, 1874, was in fact made and entered into, in parole, in the month of February, 1872. By virtue of the power of substitution contained in the letters of attorney mentioned in the third paragraph of the plaintiff's bill, said Musser had substituted said Porter in his place and stead as the duly authorized agent and attorney-in-fact of said Standish, Conrow, and Parsons. Afterwards, and in the latter part of the year 1870, I was employed by said Porter, as such agent and attorney, through said defendants, Rittenhouse and Peugh, to render the legal services requisite in the preparation, presentation, and prosecution of the aforesaid claims. By my said agreement with said Porter, he, the said Porter, undertook and agreed, as such agent and attorney, that in consideration of such legal services already rendered, and thereafter to be rendered by me, I should receive four per centum of the aggregate
187 amount which should thereafter be awarded by reason of said claims; I to have a lien for the same upon the amount of such awards and upon the interest of him, the said Porter, therein; which said interest was fifty per centum of the whole amount of such awards. Afterwards, and before my said agreement was reduced to writing, said Standish and said Parsons revoked said letters of attorney procured by Musser as aforesaid, and severally constituted said Porter their sole agent and attorney in the premises, and also entered into a contract with him whereby they respectively stipulated and agreed to pay to him, Porter, in consideration of his services in the premises, one-half of whatever sums of money should be ultimately awarded to them, respectively, by reason of their said claims. Porter's letters of attorney, as well as those first mentioned

herein with the said substitution, were meant and intended by the respective parties thereto to be securities for said Porter's interest in said awards. Said Porter has always recognized, and still does recognize, the validity of his said agreement with me. I faithfully and diligently rendered all the services on my part to be rendered under said agreement. Those services extended over the entire period beginning in the latter part of the year 1870, and ending in the month of September, 1875, when the last of said awards was made by the umpire to whom said cases were referred by said commission. They consisted in preparing and submitting memorials, briefs, and arguments, adducing evidence, giving professional advice from time to time, whenever requisite, and attending in person the sessions of said commission. On the twelfth and thirteenth days of March and on the nineteenth day of September, 1875, respectively, awards were made by said umpire in favor of said Standish, for the sum of $42,486.30; said Conrow, for the sum of $50,497.26; and said Parsons, for the sum of $50,828.76, amounting in the aggregate to the sum of $143,812.32, in Mexican gold dollars, as stated in said bill. I have never received payment of any part of the compensation named in my said agreement with said Porter, and I am justly and equitably entitled to receive out of the fund now in the hands of the Secretary of State of the United States, or hereafter to come to his hands, as set out in plaintiff's said bill, and out of said Porter's interest therein and distributed share thereof, four per centum of the said aggregate amount—that is to say, the sum of $5,752.49 in gold, with interest. At no time during my dealings with said Rittenhouse, Peugh, and Porter, as aforesaid, had I any knowledge or notice, actual or constructive, of any of the alleged conversations, agreements, undertakings, and arrangements between said Chiles and said Porter, or between said Porter and said Musser.

8. I admit the truth of the allegations contained in the eighth paragraph of said bill.

9. I know nothing touching the matters and things alleged in the ninth paragraph of said bill. It is not alleged, and doth not appear in and by the said bill, that I ever had any notice or knowledge of the alleged conversations, agreements, understandings, and
188 arrangements between said plaintiff and said Porter, and between said Porter and Musser, set out in the second paragraph of said bill, or any of them, and I pray the same benefit and advantage of this my answer as if I had formally demurred to said bill.

10. I know nothing touching the matters and things alleged in the tenth paragraph of said bill.

11. I admit the truth of the allegations contained in the eleventh paragraph of the said bill.

12. I aver and charge that said Porter, in fraud of my rights, has undertaken to dispose of his whole interest in the said several awards in favor of said Standish, Conrow and Parsons to the defendant, Stephen V. White, who is now seeking to obtain possession of said fund, to the extent of said interest, and apply it to his own use. I know nothing further touching the matters and things alleged and

charged in the twelfth paragraph of said bill, except as hereinbefore set forth.

And, having fully answered, I pray to be hence dismissed with my reasonable costs.

CH. H. WINDER.

C. INGLE,
Sol'r for Def't.

I do solemnly swear that I have read the foregoing answer, by me subscribed, and know the contents thereof, and that the facts therein stated upon my personal knowledge are true, and that the facts therein stated upon information and belief I believe to be true.

CH. H. WINDER.

Sworn and subscribed before me, July 16, 1879.

R. J. MEIGS, *Clerk S. C. D. C.*,
By R. J. MEIGS, JR., *Ass't Clerk.*

EXHIBIT C. H. W. No. 1.

I hereby agree and bind myself to pay Charles H. Winder, for services already rendered, and hereafter to be rendered, in the cases of Sarah Mildred Standish, Mary Conrow, S. Kearney Parsons, now pending before the Joint American and Mexican Commission, now in session in the city of Washington, D. C., four per centum on the aggregate amount which shall be awarded in said cases.

Witness my hand and seal, this 21st day of April, 1874. Done in the city of Washington, D. C.

R. H. PORTER, [SEAL.]
Attorney-in-Fact.

Witness:
THOS. P. MACMANUS.
W. S. LEMMONS.

In the Supreme Court of the District of Columbia, the —— day of July, 1879.

JOHN CHILES, Plaintiff,
vs.
RICHARD H. PORTER *et al.*, Defendants. } No. 6703. Equity Doc. 19.

The plaintiff hereby joins issue with the defendant, Samuel A. Peugh, and will bear the cause on bill, answer, and testimony of witnesses against him, the defendant Peugh.

JOHN CHILES,
By L. H. PIKE AND
JOHN N. OLIVER,
His Solicitors.

189 In the Supreme Court of the District of Columbia.

JOHN CHILES, Plaintiff,
v.
RICHARD H. PORTER *et al.*, Defendants. } 6703. Equity Doc. 19.

It appearing to the court that the order of publication passed in the above cause on the 8th day of April, 1879, has been duly published as ordered, and it further appearing that the defendants, Stephen V. White, Sarah M. Standish, Mary A. Conrow, and Stephen K. Parsons, have failed to enter their appearance as ordered, or to plead, answer, or demur to said bill, it is, this 23d day of July, 1879, on motion of plaintiff, by his solicitors, ordered, adjudged, and decreed that the matters and things in said bill of complaint contained be, and the same are hereby, taken for confessed against the said defendants, Stephen V. White, Sarah M. Standish, Mary A. Conrow, and Stephen K. Parsons.

By the court:

MACARTHUR.

WASHINGTON, D. C., *July* 23, 1879.

Mr. Luther Pike, solicitor, to Washington Law Reporter, 631 F street, Dr.

April 14. To pub. abs. def'ts' notice, Chiles *v.* Porter *et al.*---- $4 00

Received payment.

JOHN L. GINCK.

UNITED STATES OF AMERICA,
District of Columbia, } *ss:*

On this 22d day of July, A. D. 1879, personally appeared before me, the undersigned, a notary public in and for the district aforesaid, John L. Ginck, being personally well known to me, and made oath in due form of law to the following statement, viz.: That affiant is one of the publishers of the "Washington Law Reporter," a newspaper published in the city of Washington, D. C.; that the annexed notice was published in said "Washington Law Reporter" once a week for three successive weeks, as follows: April 14, 21, and 28, 1879.

JOHN L. GINCK.

Sworn and subscribed before me, the day and year above written.

JAMES T. POWELL,
Notary Public.

In the Supreme Court of the District of Columbia, the —— day of July, 1879.

JOHN CHILES, Plaintiff,
vs.
RICHARD H. PORTER *et al.*, Defendants. } No. 6703. Equity Doc. 19.

The plaintiff hereby joins issue with the defendant, Thomas P.

MacManus, and will hear the bill on cause, answer, and testimony of witnesses against him, defendant MacManus.

JOHN CHILES,
By L. A. PIKE AND
J. N. OLIVER,
Sol'c'rs.

190 In the Supreme Court of the District of Columbia, the —— day of July, 1879.

JOHN CHILES, Plaintiff,
v.
RICHARD H. PORTER, *et al.*, Defendants. } No. 6703. Equity Doc. 19.

The plaintiff hereby joins issue with the defendant, Charles H. Winder, and will hear the cause on bill, answer, and testimony of witnesses against him, defendant Winder.

JOHN CHILES,
By L. H. PIKE AND
JOHN N. OLIVER,
His Solicitors.

In the Supreme Court of the District of Columbia.

JOHN CHILES
v.
STEPHEN V. WHITE *et al.* } Equity.

On motion of the plaintiff, by his solicitors, it is this 5th day of November, 1879, ordered, adjudged, and decreed that the decree *pro confesso*, passed in the above-entitled cause on the — day of July, 1879, be, and the same hereby is, made absolute, and it is further adjudged, ordered, and decreed that the matters and things alleged in the bill of complaint filed in said cause be taken *pro confesso* against the defendants, White, Conrow, Parsons, and Standish.

By the court: MACARTHUR, *Justice.*

In the Supreme Court of the District of Columbia, November 5th, 1879.

JOHN CHILES
vs.
RICHARD H. PORTER *et al.* } Equity. No. 6703.

Take notice that on Saturday, November 8, 1879, at the opening of the court, or as soon thereafter as counsel can be heard, we will move the court to limit the time for taking depositions in the above cause.

L. H. PIKE,
JOHN N. OLIVER,
Solicitors for Pl'ff.

To John J. Johnson, Esq., solicitor for R. H. Porter; Southard & Miller, solicitors for T. MacManus; C. Ingle, Esq., solicitor for C. H. Winder, S. A. Peugh, Esq.

Service acknowledged.

JESUP MILLER,
Solicitor for MacManus.
J. J. JOHNSON,
For Porter.
S. A. PEUGH,
C. INGLE,
For Defendant Winder.

191 In the Supreme Court of the District of Columbia.

JOHN H. CHILES
vs.
RICHARD H. PORTER *et al.* } Equity. No. 6703.

On motion of plaintiff, by his solicitors, it is this 8th day of November, 1879, ordered that the plaintiff have twenty days within which to take depositions of the above cause, and the defendants have twenty days within which to take theirs, and then the plaintiffs shall have ten days to take depositions in rebuttal.

By the court: MACARTHUR, *Justice.*

In the Supreme Court of the District of Columbia.

JOHN CHILES
vs.
RICHARD H. PORTER. } No. 6703. Eq. Doc. 19.

At an examination held before me, an examiner in chancery, beginning on the 17th day of November, A. D. 1879, and ending on the 11th day of February, A. D. 1880, the within-named witnesses, John Chiles, George W. Gist, Albert Pike, and Richard H. Musser were produced on the call of the complainant, and after being duly sworn by me, the within depositions were written down by me from the statements made by the said witnesses, read to them, and by them signed in my presence.

Messrs. Pike and Oliver appeared for the complainant; Mr. J. J. Johnson for defendant Porter; Mr. C. Ingle for defendant Winder; Mr. T. Jesup Miller for defendant McManus; Mr. Ed. B. Hay for defendant Peugh; and Messrs. Hughes, Buchanan, and DeWees for defendant Rittenhouse.

JNO. A. CLARKE, *Examiner.*

In the Supreme Court of the District of Columbia.

JOHN CHILES
vs.
R. H. PORTER *et al.* } No. 6703. Eq. Doc. 19.

Take notice that on Monday, Nov. 17, 1879, at 10 o'clock a. m. of said day, at the office of Mr. John N. Oliver, 458 Louisiana avenue n. w., I shall proceed to take the testimony of witnesses on the call of this complainant.

JNO. A. CLARKE, *Examiner.*

Nov. 17TH.

Continued to Friday, at 10 a. m., Nov. 21st.

In the Supreme Court of the District of Columbia.

CHILES
v.
PORTER *et al.* } No. 6703. Eq. Doc. 19.

Nov. 17TH, '79.

Met pursuant to notice.

By consent of counsel the hearing was adjourned to Nov. 21st, 1879, at 10 o'clock a. m.

192 No. 21, '79.

Met pursuant to adjournment.

Present: Counsel for complainant and J. J. Johnson, Esq., for deft. Porter and C. Ingle, Esq., for deft. Winder, and Sam'l A. Peugh *in propria personæ*.

JOHN CHILES, a witness of lawful age, produced on behalf of complainant, being sworn, says:

Examined by Mr. OLIVER:

I claim my residence in Kentucky, but for most of the time I live in Washington, being a bachelor, I have no specific place. I am the plaintiff in this suit. I don't know Porter, Peugh, Winder, McManus. I have seen White, but can't say that I know him. I don't know the other defendants. I have known the deft. Porter since about 1867 or '68. [In the last year of the war and in the first half of the following year, 1866, my time was spent chiefly on the Rio Grande, both in Mexico and Texas, and during my stay I became familiar with the treatment extended by the authorities of Mexico to citizens of the United States.]

Testimony within brackets is objected to by Mr. Johnson, as far as the deft. Porter is concerned, as wholly inadmissible. Same objection is interposed by Mr. Ingle on behalf of deft. Winder, for the same reason.

Witness resuming, says: About June or July, 1865, I came to the city of New York, where I remained for two or three years. Subsequently I came to the city of Washington, where I remained mostly ever since. Was here at the time of the treaty of July 4, 1868, was confirmed. After the commission was organized under that treaty—

Counsel for deft. Porter objects to this line of examination, as having nothing in the world to do with the allegations made by the pleadings.

Witness resuming, says: I determined to avail myself of the knowledge obtained during my stay in the Rio Grande, specifically in Mexico.

Here counsel for deft. Winder interposes an objection, on the ground that the purposes and motives of the complainant are im-

material and irrelevant; and, secondly, because the period of witness' residence in Mexico and Texas, as stated in the previous testimony, does not cover the time of the robbery and murder of Conrow and Parsons and Standish, Aug. 16, 1865, as stated in complainant's bill, but was prior thereto.

Witness resuming, says: And for that purpose rented a room or office on the corner of 15th St. and New York avenue, in this city, and advertised myself as an agent for the preparation and prosecution of claims before said commission on behalf of citizens of the United States. About this time I entered into a special partnership—

Counsel for deft. Porter here gives notice to solicitor for complainant that before or at the trial he will move to suppress or expunge from the record all the foregoing testimony, under the rule of court, as irrelevant and inadmissible.

193 Witness resuming, says: With G. W. Gist, an experienced lawyer of this city, for the prosecution of certain claims before said commission, specified in a written article of agreement between us.

Counsel for def't Porter here calls for the production of the written agreement referred to.

Witness resuming, says: But the partnership—

Counsel for def't Porter objects to witness detailing the contents of the agreement without the same is first produced.

Witness resuming, says: Was special, and not general. Gist was interested in claims in which I had no interest, and I had some in which he had no interest.

Counsel for def't Winder objects to all the foregoing testimony that follows the portion last objected to by him, on the ground of irrelevancy and on the other ground already stated.

I was well acquainted with Parsons and Standish, having served in the Confederate army with them, and was somewhat intimate with their private business, especially with that of Standish, with whom I messed for a considerable time. This circumstance induced me to look with some care into the circumstances attending their murder and robbery by the Mexican authorities and to advise with their legal representatives for the prosecution of claims in their behalf for damages before the aforesaid commission. With this end in view, I consulted with Judge Gist and solicited his aid in hunting up the parties and making an agreement with them for the prosecution of these claims, which he declined.

Counsel for def't Winder objects to all of the foregoing testimony last objected to by him for the same reasons.

Q. State now, if you made any contract with R. H. Porter in relation to the prosecution of these claims of Conrow, Parsons, and

Standish's legal representatives, whether the contract was in writing, if any was made, and, if not in writing, what the contract was.

A. About this time——

(Here counsel for def't Porter calls upon complainant's solicitor for the production of the contract referred to, if the same is in writing.)

Witness resuming, says: R. H. Porter rented a room in the same building as myself and adjoining that of mine, and was very frequently in mine, and having heard the conversation between Judge Gist and myself in relation to these claims, proposed that he, after Judge Gist had declined, would go to Missouri and undertake to hunt up the parties and get the claims on the same terms as offered by me to Judge Gist: that is, that he would pay all necessary expenses incurred in that behalf, and that all fees be equally divided between Porter and myself. I agreed to this proposition, and under the agreement which was wholly in parol and not in writing, Porter went to Missouri to look after the matter, having received full instructions from me, and also from my friend Judge Gist, as to the mode of procedure of getting up and preparing the claims, and having furnished him with blanks for that purpose, with proper instructions for filling them up.

Q. State, if you know, what steps Porter took, and what he did in pursuance of that agreement.

194 A. Porter was absent several weeks—I don't remember how many—and on his return reported to me that he had been unable to make any agreement with the claimants in regard to that matter, and said, believing that it was owing to his being a stranger to the parties, he sought the assistance of others; and having heard that Col. R. H. Musser, a lawyer of St. Louis, Mo., was well known to the families of the murdered men above named, he made his acquaintance, and laid the whole matter before him, and in consequence he and Musser entered into an agreement by which Musser was to procure a power of attorney from said parties for the prosecution of said claims, and to enter into an agreement with them for fees. All fees so agreed upon between Musser and the parties aforesaid were to be equally divided between him and said Porter; that is, Musser was to have one-half of said fees and Porter the other half.

On Porter's return to Washington, he stated to me the condition of the agreement between him and Musser, and asked my assent to it, stating that the one-half of the fees to be received by him was to be equally divided between him and myself; that is to say, one-half of all fees to be received was to go to Musser, one-fourth to Porter, and one-fourth to myself. These conditions I agreed to, and confirmed the agreement with Musser, which was in parol and never reduced in writing.

(Counsel for def't Porter objects to the foregoing testimony not already objected to, as being within the statute of frauds.)

Q. State what Porter informed you the terms were; that is, what

amount that might be allowed the claimants was to be paid for attorneys' fees.

(Counsel for def't Porter objects to the question because the contract is in writing, and shows what the amount is as well as who was to receive it, and because any testimony to alter, vary, or contradict the contract is incompetent.)

A. He said that the agreement between Musser and the claimants was that Musser was to receive one-half of the gross amount that might be recovered in each and all of the claims, which amount was to be divided between us, as I have stated above.

Q. Did Porter ever show you or did you ever see the original powers of attorney from the claimants to Musser, or the contracts for fees?

A. He never did, and I have never seen them.

Q. State in detail what you did in pursuance of your agreement with Porter.

A. I wrote to a friend in New York, or rather he wrote for me to the U. S. consul at Monterey, to give us all the facts that he could procure in relation to the murder and robbery of Conrow, Parsons, and Standish. The consul answered the letter, which was handed to Porter by myself, which was never returned to me, as far as I remember. I also got another friend in New York to write to Mr. Stone at Eagle Pass for all the facts that he could gather in
195 regard to the matter, which letter was answered by Stone and handed to Dr. Porter. I also furnished from time to time, when required, such facts as led to the whereabouts of other witnesses, and the mode of tracing up evidence in these cases.

Q. State when this commenced and when it ended—that is, this information.

A. I began when Porter first went to Missouri, in 1869 or '70, I believe, and continued until the final submission of the cases to the arbitrators or commissioners.

Q. When Porter on his return to Washington city from St. Louis informed you that he had associated Mr. Musser, of St. Louis, in the prosecution of the claims, and you assented to that agreement, what portion of the burden of the prosecution of said claims was it agreed between you and said Porter should be borne by each of you; that is, what was each of you to do in the prosecution of the claims, particularly what was Col. Musser to do?

By Mr. JOHNSON:

(Objected to, because if there was ever any contract existing between the complainant and the def't Porter, it was before Porter's return from Missouri, as the witness has testified that Porter went originally to Missouri in pursuance of a contract made between them.)

A. Mr. Porter stated to me that he and Musser were to get up the proof and prepare the cases; each of them, Porter and Musser, give their best attention to this, Musser to have the exclusive control and management as attorney of record before the commission; I was to furnish all the information and assistance in my power whenever

called upon to aid them in that matter. This was to be my only duty in the performance of this agreement.

Q. Did Porter ever assert to you that he was dissatisfied with the contract he had made with you, or in any way repudiate it?

A. Never. He repeatedly stated to me that a bitter feeling of animosity had sprung up between him and Musser, growing as he said, out of Musser's failure to furnish money which he agreed to furnish to pay necessary expenses, but said whatever dispute between him and Musser, or whatever the result, it would in no event interfere with my right or interest.

Cross-examined by Mr. JOHNSON:

Q. Mr. Chiles, in what business were you engaged during the years you resided in Mexico and Texas?

A. Mainly in business connected with the military department of the Confederate government, acting under authority of General E. Kirby Smith.

Q. In what business were you engaged during the period you mentioned you lived in New York?

A. Mostly in settling up some old private affairs of business which transpired previously to the war.

Q. What is your present business?

A. Attending to some claims before Congress, and largely engaged in this troublesome lawsuit.

196 Q. Have you an office?

A. I have not; I have rooms.

Q. How many claims had you filed before this commission at the time of the filing of the claims in question?

A. I do not recollect the number, but a considerable number, however, in which Judge Gist appears as the attorney of record.

Q. Does your name appear as the attorney of record in any case before this commission?

A. I think not.

Q. What was the name of the friend of whom you have testified wrote to the consul concerning the claims in question?

A. Albert Urbahn, during the war a well-known citizen of San Antonio, Texas.

Q. Was the letter signed with your name or his?

A. Signed with his name, and the answer received by him and handed to me, and by me handed to Porter.

Q. Who wrote the second letter of which you speak?

A. William McGrorty, a friend and former partner of Stone.

Q. Well, whose name was signed to that letter?

A. McGrorty's, and the answer received in the same way and handed to me, and I handed it to Porter.

Q. Were these letters written before or after Porter's visit to Missouri, which resulted in an alleged contract between Porter and Musser?

A. I do not recollect the precise date, but I am very confident it was before he went to Missouri.

Q. When did you discover that Musser was not alone prosecuting these claims as attorney of record?

A. I never discovered it at all.

Q. Pending the filing of these claims did you not manifest enough interest in them to look after them and see how they were progressing from time to time before the commission?

A. By the agreement between Musser, Porter and myself it was clearly understood that Musser was to have the exclusive management before the commission, without interference on the part of Porter or myself, further than to furnish him with any information or assistance in our power; and, if Musser thought proper, to call to his assistance other counsel, [it] was to be done at his own instance and expense.

Q. When did you first learn that other counsel had been entered as of record?

(Objected to, because it has not been shown that any other counsel had been entered of record.)

(Counsel for the complainant will refer to the organization and rules of the commission to show what was its status as to attorneys for prosecution of these claims before the said commission.)

(Question withdrawn.)

197 Q. Do you know who filed briefs and arguments before said commission in these cases in question?

A. I supposed the arguments and briefs were filed by Mr. Ashton, the attorney for the United States.

Q. Who prepared the arguments that were submitted in behalf of the claimants, and which were handed to Mr. Ashton, and by him filed as attorney of the United States?

A. I can't say.

Q. Do you recollect having any conversation with Porter in August, 1870, in the city of New York, concerning these claims?

A. I had conversation with Porter so often on the subject of these claims that I cannot refer to any particular conversation without having my attention called to some circumstances connected with it.

Q. Are you personally acquainted with Musser?

A. I am.

Q. When and where did you first meet him?

A. In Washington a short time after the awards were rendered.

Q. How did you come to meet Mr. Musser?

A. I met him in the ordinary way I meet other people; don't know any particular circumstances connected with it.

Q. By whom was Musser introduced to you?

A. I really do not recollect.

Q. Do you recollect the place you met him?

A. In Washington; but don't recollect the particular place, I met him so often.

Q. I wish you would tell me in detail now every act that you did with a view of promoting the prosecution of these claims before the commission.

A. I don't know that I can answer that more fully than I have

already answered it. Porter came to me so often for consultation and advice that it would be utterly impossible to enumerate the instances in which I was called upon.

Q. Did you ever go before the commission to look after these claims?

A. I never went formally before the commission; but having known Mr. Wadsworth for many years intimately, I called upon him several times at his rooms in Willard's Hotel informally, when the subject of these claims was mentioned, and on one occasion I discussed with him, in an informal way, the right of the heirs and legal representatives of these men to recover damages for their murder. Mr. Wadsworth contended that the act of murder was a felony, and hence a crime punishable by death or imprisonment. I contended that it was an act, not only a crime against the commonwealth, but it was a trespass against the rights of those legally entitled to their services, and cited his attention to a law of Kentucky during slave times, which provided whilst a murder of a slave was
a crime against the commonwealth, parties committing the
198 murder were liable to the owners of the slaves for the value
of his services. This position was afterwards sustained both by Mr. Wadsworth and Sir Edward Thornton.

Q. Having concluded your argument, please tell us the names of what witnesses you furnished in these cases.

A. I don't know what you refer to.

Q. Give me, if you please, the name of each and every witness whose testimony was taken, filed, and used by the commission, tending to prove damages, or for any other legitimate purpose, in the cases of Conrow, Parsons, and Standish furnished by you.

A. I have already stated that the agreement provided that the taking of the testimony was to be attended to by Musser and Porter, and such information as I had concerning witnesses was given to Porter for the use of himself and Musser.

Q. Tell me what information you had that you gave to Porter to be used in these cases?

A. To do that I would have to recollect something less than one thousand conversations between Porter and myself, how much less I cannot say.

Q. Did you ever furnish any money to be used in the prosecution of these claims?

A. None; it being particularly stipulated at the beginning of the matter that I was to pay no portion of the expense in the prosecution of these claims. The whole agreement between Porter and myself was verbal and never reduced to writing.

Q. Did you give Porter substance of what any witness could swear to?

A. I presume I did so in every case as far as it was in my power.

Q. Was it in your power to do so?

A. I think it was.

Q. Now, give me the names of any witnesses with whom you were acquainted before you entered into the alleged contract with Porter, and whose testimony was taken and used in these cases.

A. I have not a list of the names of witnesses, and will have to refer to the record to answer with any precision.

Q. Was not this the understanding between you and Porter; you having no information upon which these claims could have been successfully prosecuted to a final result. You said to Porter either in 1869 or Aug., 1870, that if he (Porter) would take you in and give you an interest in the awards from which Porter's fees were to be collected you would furnish a certain amount of money to enable Porter to proceed with the prosecution of these claims which had at that time come to a stand-still for the want of means. Porter replied that upon your raising a certain sum of money he would, and that after a lapse of some days, you informed Porter that you had no money yourself, and that you were unable to raise any, and thus terminated the imaginary or prospective agreement between you?

199 A. The proposition set forth is so complicated that I am at a loss whether to answer it as a question or review it as a narrative. The agreement between Porter and myself, I have already set forth as clearly and distinctly as I can find language to express it. The assertion that I had no knowledge upon which this claim could be investigated and prosecuted successfully is not true. The facts brought out by information furnished by me mainly conducted this prosecution to a successful termination. Porter seemed o be a hungry fellow, and was all the time after money, importuning and beseeching me, almost beyond my powers of endurance, for money, and urging me to aid him in any amount, from $1 up, that I could spare. He never pretended that I was under any obligation to furnish money to pay the expenses in the prosecution of these claims, but urged me as a matter of favor, and in view of the great necessities incurred, to assist with money in any way that I could. These importunities I sternly rejected, and entered into no new obligation whatever.

Q. You have repeatedly said that these claims were pressed to a final termination by the information you gave, and you have been as repeatedly requested to state in positive terms what that information was that you gave to Porter. Is your recollection refreshed by the last question that you are enabled now to give even any latent facts which promoted the prosecution of these cases?

A. I think I have already fully answered the question, and know nothing more that I could add.

Adjourned to Nov. 22, '79, at 3 o'clock p. m.

Nov. 22d, 1879.

Met pursuant to adjournment.

Present: Mr. Oliver, of counsel for complainant, and Mr. C. Ingle, for defendant Winder.

Redirect examination by Mr. Oliver:

Q. Did Dr. R. H. Porter first tell you of the claims of Standish, Conrow, and Parsons, or did he receive that information from you?

A. Porter knew nothing whatever of these claims or of the cir-

cumstances upon which the claims are founded, except what he received from me, as he himself has frequently told me, and also wrote a letter to some of the parties in Missouri, stating the same thing; a copy of which letter I believe is now on file in this case, marked Ex. J. C. No. 2.

JOHN CHILES.

Adjourned to Nov'r 24th, '79, at 3 o'clock A. M.

NOV. 24TH, '79.

Met pursuant to adjournment.

Mr. Pike for complainant, Mr. C. Ingle for def't Winder, and Mr. J. J. Johnson for def't Porter.

Whereupon the witness signs his deposition.

JOHN CHILES.

Sworn to and subscribed before me, this 24th day of November, A. D. 1879.

JNO. A. CLARKE,
Examiner.

200 By consent of counsel, adjourned to meet at the office of Messrs. Albert Pike & Son, No. 602 "D" St. N. W., on Tuesday, Dec. 2d, '79, at 10 a. m.

DEC'R 2D, '79.

Met pursuant to adjournment.

Present: Counsel for complainant and defendant Winder.

Mr. Johnson, for def't Porter, being absent, reserves the right to enter objections and cross-examine witness hereafter, before the close of the deposition.

Whereupon GEORGE W. GIST, a witness of lawful age, produced on behalf of complainant, being sworn, says:

Exam'd by Mr. PIKE:

Q. State your name, age, and occupation.

A. My name is George W. Gist; my age is 58 years; I am a lawyer by profession, and am now a clerk in the Treasury Department, and I reside in the city of Washington, D. C.

Q. Are you acquainted with the parties of this suit?

A. I am—that is I am acquainted with Chiles & Porter, McManus & Rittenhouse, but don't know any of the others.

Q. How long have you known these parties?

A. I suppose I have known Major Chiles since 1843. Porter I became acquainted with in 1868 or '9. McManus, I made his acquaintance here in 1871 or '2, and Rittenhouse I have known about since 1869, when his banking house was on Pennsylvania avenue, near the Metropolitan Hotel.

Q. Where were you residing, and in what occupation were you engaged, and your place of business in the year 1869?

A. I was residing in Washington city, on H street; I don't re-

member the number; near Mr. Gurley's church; part of the year I was engaged clerking for C. D. Pennybaker, and also engaged in the prosecution of claims. My place of business was, part of the time, in Pennybaker's office, in the house in which he resided, and part of the time in Plant's Building, corner of New York avenue and 15th St. N. W.

Q. Do you know where the plaintiff John Chiles was residing; in what business he was engaged, and his place of business in the said year 1869; if so, state fully your knowledge on said point?

A. Mr. Chiles, at that time, was residing in Washington, D. C. I think his place of business was, for part of the time, in Plant's Building. He was engaged at that time in the prosecution of claims.

Q. Was there in said year 1869 and '70 any copartnership, general or special, between yourself and said Chiles; if yea, state the same, and what it related to?

(Objected to, as irrelevant.)

A. There was; Mr. Chiles and myself were engaged in the prosecution of claims against Mexico before the Joint American and Mexican Commission. The partnership was a special one, for this purpose only.

201 Q. Did you, in said year 1869, or at any time, have knowledge or information of claims existing against Mexico in favor of the widow and children of M. M. Parsons, Aaron H. Conrow, and Austin M. Standish, on account of their alleged murder and robbery in the Republic of Mexico by Mexican soldiers; if yea, state fully from whom you acquired such information, its character, and whether you had any connection with the preparation, presentation, or prosecution before the commission named by you?

A. I did. I acquired my information from John Chiles. I stated before that Mr. Chiles and myself were engaged in the prosecution of such claims. He came to me and detailed to me the circumstances of the murder and robbery, and asked me if I could not go to Missouri and prepare these claims. I could not go, and declined to do so. Upon my declining to go to Missouri, Mr. Chiles divulged the facts to Rich'd H. Porter, who agreed to go and secure the claims, as I understood, and I drew the petitions for him, and gave him full instructions as to how to prepare the claims, one or more of them, as he didn't know how to prepare them himself. That was done at Chiles' instance and request. After Mr. Porter returned from Missouri, having procured the claims, I prepared one or more of the memorials, upon the belief and understanding that the claims were to be prosecuted as other claims Chiles and myself had, but upon requesting Porter to have my name inserted as attorney of record, he declined to do so unless I would advance him $500, or about that sum, which I refused to do, whereupon my connection with said claims ceased, and determined our partnership as to these claims.

Q. In answer just made, you state that Mr. Chiles divulged the facts to Mr. Rich'd H. Porter, as you understood. Please state now upon what knowledge or information had by you you predicate said statements, particularly whether you were present at conversations

between Major Chiles and said Porter, or whether you otherwise acquired said knowledge or information from said Porter.

(Objected to, as suggestive and leading.)

A. I acquired the information both from Mr. Chiles and Dr. Porter. I had repeated conversations with both of them at different times—sometimes when both of them would be present, and when one only was present.

Q. State whether or not in the course of those conversations you acquired any knowledge or information of the existence of any contract between said Chiles and Porter relative to their prosecuting, jointly or severally, said claims before said commission; if yea, state what the terms of said agreements were, according to the best of your recollection and belief.

(So much of the question as relates to conversations between the witness and the plaintiff is objected to.)

A. I understood from both of the parties that the fees were to be equally divided between Chiles and Porter, and that Chiles' portion of the fee was to be divided with me, as had been all the fees of
202 claims which we had prosecuted, but afterward I went out of the case; I had nothing to do with it, as Porter refused to make me the attorney *on* record, as already stated by me.

Q. Did you understand from the admissions of said Porter and Chiles, what was to be the division of labor between them, and in what proportion they were to bear the expenses incident to the prosecution of said claims before said commission?

A. I understood from both parties that Porter was to prepare the claims in the country, get up the petitions, get up the proofs, &c., at his own expense, and Chiles and myself were to perform the labor and incur all the expense incident to the prosecution of the claims before the commission.

Q. You have heretofore answered that Porter declined to insert your name as attorney of record unless you would advance him $500, or about that sum, which you refused to do; why did you so refuse?

(Objected to, as immaterial and irrelevant.)

A. Because I understood that Porter was to procure the claims, get up the petitions and the evidence in the country, at his own expense, and his demand for the $500 astonished me, and I immediately went to Major Chiles and informed him that my belief was that Porter was about to euchre us out of the claims.

(The answer objected to, first, as not responsive to the question, and secondly, as manifestly incompetent.)

Q. When you so declined to advance the $500 asked for, did you thereupon inform said Porter that you would have nothing further to do with the cases?

A. I do not recollect whether I did or not.

Q. Did your withdrawal from the prosecution of said claims put an end to the agreement between Chiles and Porter?

A. I cant't say whether it did or did not; I had no more to do with the claims afterwards.

Q. Do you know what, if anything, was done by either Porter or Chiles in the prosecution of said claims after your withdrawal?

A. I don't know anything, of my own knowledge, excepting what the records show up to the State Department.

Q. Did you, at any time subsequent to your withdrawal, know of any assertion being made by Porter that your said withdrawal had put an end to the agreement between him and Chiles?

A. I don't remember having ever heard anything of the kind from Porter.

Q. Did you have, at any time after your withdrawal, any conversations with said Porter in regard to the prosecution of said claims?

A. I do not at the time remember having any; I was very indignant at Dr. Porter, and did not talk to him about that matter—these claims.

203 Q. Have you had, subsequent to your withdrawal, conversations with said Porter on other subjects than the prosecution of said claims?

A. Yes, sir.

Q. Have you ever, at any time since your said withdrawal, heard said Porter express or declare that your said withdrawal terminated the agreement between said Porter and said Chiles in relation to their prosecution of said claims?

A. No, sir.

Q. Have you ever at any time heard said Porter declare that the agreement between said Porter and Chiles had been terminated.

A. Never.

Cross-examined by Mr. INGLE:

Q. Was the agreement between Chiles and Porter in writing.

A. I do not know; but I don't think it was, though.

Redirect examination:

Q. Was the work of prosecuting said claims to be entered upon within one year from and after the entering into of said agreement?

A. I understood it was to be entered into immediately—as soon as Porter *go* to Missouri.

Q. Was the work upon the prosecution of said claims actually begun by said Porter and Chiles within one year after the making of said agreement?

A. Yes, sir; they began very shortly after the agreement was made.

Q. Did said Porter shortly after said agreement was made *to* go to Missouri in pursuance of it?

A. He did, as I understood; he came back and told me that he had the cases.

Q. State, as well as you can upon your recollection, what report, if any, said Porter made on his return of his operations in Missouri, in relation to his procuring and prosecuting of said claims; and did

he make any mention in said report, if made, of the name of one Rich'd H. Musser?

A. Dr. Porter told me that he had procured the claims, and that he had employed a man to assist him by the name of Musser, in St. Louis, Missouri. He was not much for telling anything; I got that out of him.

Q. Did or not Porter inform you what were the terms upon which he employed said Musser; if yea, state what he said those terms were.

A. I think he did, but I don't remember what those terms were; I think he told me this as an excuse for his not complying with his terms with Chiles and myself; the conversation came up at the same time I was talking to him about my being made attorney aforesaid.

Adjourned to 3 o'clock this p. m. (Dec. 2, '79).

Dec'r 2d, 3 o'clock p. m. Met pursuant to adjournment, and adjourned to Dec'r 3rd, '79, at 12.

Dec'r 3d, '79. Met pursuant to adjournment. Present: Counsel for complainant and J. J. Johnson, for defendant Porter.

204 Whereupon the cross-examination of the witness, GEO. M. GIST, was commenced.

By Mr. JOHNSON:

Mr. Johnson, solicitor for defendant Porter, before proceeding with the cross-examination of Mr. Gist, desires the examiner to state that, not being present at the examination-in-chief, desires to enter objections to each and every interrogatory, so far as the same is leading, immaterial, irrelevant, and incompetent, as if they were here severally repeated.

Cross-examination of Mr. GIST:

Q. When, where, and how long have you practiced law?

A. I graduated in 1846, but I did not, however, commence to practice regularly until 1849, at Mount Sterling, Kentucky. I practiced there until the break out of the war, 1861, when I entered the army. Since that time I practiced here until within the last three or four years, when I entered the Treasury Department. I came here in 1869.

Q. Have you been admitted to the bar of the supreme court of the District of Columbia?

A. No, sir; but I have been admitted to the Supreme Court of the United States. I might have added that I was engaged in the prosecution of claims, and practicing before the courts here.

Q. When did you first make the acquaintance of the defendant Porter, and where?

A. I think, sir, in the year 1869, in this city.

Q. In what business were you engaged at that time?

A. In 1869 I was clerking in the Kentucky State agency, and part of the time I was engaged in the prosecution of claims.

Q. What kind of claims were you engaged in prosecuting, and before what departments?

A. Claims before the Joint American and Mexican Commission against the Republic of Mexico, and in claims of individuals before the several departments of the Government.

Q. Up to the time of accepting a clerkship in the Treasury Department how many claims had you filed as attorney-in-fact before the several departments and the Mexican Commission?

A. I could not tell you, sir, how many claims I filed before the several departments, but quite a number; however, I think I prosecuted eight or ten claims before the Joint Mexican Commission.

Q. Why did you decline to go to Missouri in relation to the claims of Prrsons, Conrow, and Standish?

A. Because I was otherwise engaged, and I might add because I couldn't spare the money to do so.

Q. How do you know Mr. Chiles divulged the facts relating to those cases to Mr. Porter?

A. I know it from conversations with both of the parties.

Q. What did Porter tell you upon the subject?

A. I couldn't pretend to detail all of Porter's conversations with me; we had quite a number. He told me in substance that he had agreed to go and secure the claims; asked my opinion as to their merits.

205 Q. What opinion did you give him as to their merits?

A. I told him I thought they were good claims.

Q. Were you present at the making of the alleged contract between Chiles and Porter? If yea, tell us when and where it was made.

A. I do not know whether I was or not when it was concluded. I was present on several occasions when the matter was talked over by the parties.

Q. Was this before or after the consummation of the contract?

A. Both before and after.

Q. Can you tell the date of the alleged contract aforesaid?

A. I cannot tell the precise date. It was in the early part of 1869—I think spring or summer of that year.

Q. Have you any interest in the result of this suit?

A. None, whatever, sir.

Q. Under the alleged contract between Chiles and Porter, what, if anything, did Porter tell you that Chiles was to do in the case; and what, if anything, he was to do?

A. He told me that it was understood that Chiles and myself were to attend to the business here before the commission; that he was to go to Missouri and procure the cases and take the evidence in the country.

Q. State, if you please, what, if anything, was done by Mr. Chiles with a view of prosecuting these claims before said commission?

A. Mr. Chiles gave the information concerning the claims.

(Here Mr. Johnson objects to the answer up to this point, as not responsive to *to* the question.)

Witness, resuming, says: And I, at his instance, drew one or more of the petitions as a guide for Mr. Porter, and, after Porter's return, I drew one or more of the memorials before I knew he was not going to carry out his contract. Here my connection with the claims ceased, and I know nothing more of what Mr. Chiles may have done.

Q. Under the terms of the contract between Porter and Chiles, what duties were assigned to Chiles?

A. I don't know of any other than I have stated, except to write letters and give information of the whereabouts of claimants and witnesses.

Q. Can you give the names of the witnesses, and what they could prove, that were given to Porter by Chiles in your presence?

A. I cannot, sir; it has been ten years since. I have no interest in the claims, and, consequently, it has passed out of my mind.

Q. Are you positive that Chiles did give Porter a list of
206 the names of witnesses and the substance of what they could prove?

A. I was not, sir; but I am positive that he gave him the names of the claimants.

Q. What was Mr. Chiles' financial condition in 1869?

A. I don't know, really, what it was; he was then, at that time, prosecuting or defending a suit for the Texas indemnity bonds in the Supreme Court of the United States.

Q. You have said that you have known Mr. Chiles since 1843; has that acquaintance been intimate or otherwise during that time?

A. The early part of our acquaintance it was intimate; there was a lapse of several years; he went to Missouri, and I did not see him until after the war; I have been quite intimate with Mr. Chiles since the war.

Q. From your information and knowledge at the time of the information of the alleged contract, was Mr. Chiles in a pecuniary situation that would enable him to prosecute his claims at his own expense?

A. I do not know whether he was or not; he didn't appear to have much ready money.

Q. You have testified in chief that Porter told you that he had employed Mr. Musser. State, if you please, in that connection, all Porter said why he employed Musser and for what purpose, and also when, to your knowledge, Mr. Chiles was first made aware of the employment of Mr. Musser by Porter.

A. It would be impossible for me to tell you all Mr. Porter said in connection with that employment. He told me, however, that he was not a lawyer, and was compelled to employ one there to draw up the papers. I do not know whether I told Mr. Chiles of the employment of Musser or not, but I think it possible that I did. I think this was in the latter part of 1869, immediately after his return from Missouri.

Q. From the date of the conversation last above, were you ever present at any conversation had between Porter and Chiles upon the subject?

A. I do not recollect that ever I was.
Q. Are you acquainted with Mr. Musser?
A. I am not.

Redirect examination:

Q. What were the terms of the special copartnership that existed between you and Major Chiles, as you have heretofore testified?

(Objected to, 1st, this is not a suit between the witness and Chiles; 2d, not responsive to the cross-examination; and 3d, irrelevant and immaterial.)

A. Chiles was to secure the cases and take the evidence in the county, or have it done, and I was to attend to the prosecution of the cases before the commission and have an equal share of his fees in the claims.

207 Recross-examination:

Q. Tell us, if you please, why you and Mr. Chiles dissolved partnership on the claims in question.

A. I went out of the claims because I was not made the attorney of record, and didn't propose to work without having some security for my fees.

Q. You have already testified that in your opinion these were good claims. Why did you and Mr. Chiles not continue the prosecution of them alone?

A. Simply because, as far as I am concerned, Porter had secured a power of attorney and refused to make me attorney of record unless I would advance him $500, or about that sum.

Q. You misapprehend the import of my question. My question had no reference to Porter, but Chiles being your special partner, and being in possession, as you have testified, of the facts necessary to a final prosecution of the claims. Now I want to know why it was with all these facts in possession of your partner, why you did not proceed at once to the prosecution of these claims without taking in and giving Porter an interest?

A. I think that has been already explained, as before stated by me; I could not leave the city, and Mr. Chiles could not go to prepare the claims.

Q. Was it not the fact your firm did not have the means to advance for the purpose of prosecuting?

A. I think the want of means had a great deal to do with it, but so far as I was concerned I had the means to go, but could not leave my business.

GEO. W. GIST.

Sworn to before me and subscribed before me this 3d day of December, A. D. 1879.

JNO. A. CLARKE,
Examiner.

Adjourned to Dec. 4th, '79, at 3 o'clock p. m.

DEC. 4TH, '79.

Met pursuant to adjournment.

Present: Counsel for complainant, and J. J. Johnson, Esq., for deft; Porter and C. Ingle, Esq., for def't Winder.

ALBERT PIKE, a witness of lawful age, produced on behalf of complainant, being sworn, says:

Examined by Mr. PIKE:

Q. State your name, age, and occupation.

A. Albert Pike; sixty-nine years old; counsellor-at-law; I reside in Washington, D. C.

Q. Are you acquainted with the parties to this suit?

A. I am. I have known John Chiles about ten years, and became acquainted with R. A. Porter in 1874 or 1875, I believe. I know Stephen V. White; I saw him but twice. I have seen young Parsons three or four years ago in Jefferson City, Missouri, and the rest I don't recollect ever seeing, excepting Winder, whom I have known many years.

Q. What was the occasion of your becoming acquainted with said Porter?

208 A. He came to Alexandria, Virginia, where I lived then in 1874 or 1875 with Col. Rich'd C. Wintersmith, of Kentucky, who came with me to introduce him and heard all the conversation that passed between us. Porter said he came there for the purpose of stating the matter fully to me, between himself and Col. Rich. H. Musser, because he had proposed to submit the matter between them to arbitration and he thought after I heard his statement about it that I would be willing to interfere in the matter and be *on* favor as one of Musser's associates having the matter decided in that way. I told him that I had not known very much about the matter as between him and Musser, because it had always been in the hands of Col. Johnson, my partner and son, but that I was very willing to hear all that he had to say. He then went on to state the matter at some length. He told me that he had obtained the information as to the killing of Standish, Conrow, and Parsons from John Chiles in this city, and that it was agreed between him and Chiles that he, Porter, should get control of the cases, and they be equally interested in the fees, whatever they might be; that he, Porter, should procure the powers of attorney and other necessary papers from the parties; that he went to St. Louis, and not knowing either Mistress Standish, Conrow, or young Parsons, he made an arrangement with Col. Rich'd H. Musser, by which Musser was to get the powers of attorney and make contracts for the fees and agreement to prosecute the cases before the American and Mexican Joint Commission for as large compensation as he could secure, and that he and Musser were to divide the compensation equally between them; that Musser should have, *as* accordance with the agreement, taken the powers of attorney to himself and Porter jointly, the compensation agreed upon being 50 per cent. of the amount that might be recovered, but he took them to himself alone, either in answer to

a question by me or of his own accord, I don't know which; he said that Chiles had failed to furnish any money or to do anything in the cases, and that he considered him out of the cases, and that he had no further interest in them. The rest of his statement was in reference to the matter between himself and Musser, which had nothing to do with Chiles, except that he stated several times that he and Musser were equally interested in the matter all the time, and that nobody else had any interest except persons, employed by himself.

When Mr. Stephen V. White came here to see us for the purpose of settling the matter in some way or other, he asked Colonel Musser what we would take for our interest in the fee of 50 per cent. Colonel Musser said, I think, $40,000; and White said, Oh, I can't give that; it is more than half the fee is worth. Well, I said, what will you give us? and he said, I haven't figured it up yet. I said, Suppose you figure it up then and see. He turned around to the table and made calculations for a while with a pencil, and said, I will give you $30,000 in cash. That is about what half the fee is worth, allowing the deduction of discount on the deferred payments. We accepted it, and transferred to him all our interest in the fees in the three cases, all the interest of Musser and Pike and Johnson.

209 He had at the beginning of the conversation distinctly stated that in his opinion we were only entitled to one-half of the fees and Porter the other half, and that he would buy our half and settle with all the other parties who claimed under Porter, and he acted throughout on the hypothesis that he was negotiating for the purchase from Colonel Musser and our firm of 50 per cent., and was willing to pay the full value of that one-half, and he made his calculations and made the purchase accordingly. When we sold to White we did it without any recourse upon us, it being distinctly understood that he was to settle with all parties to whom Porter was bound.

Q. Is the law firm of Pike & Johnson still in existence?

A. No; it was dissolved by the death of Colonel Robert W. Johnson last summer, but the firm was in existence and he living when the sale was made to White.

Q. How did the firm of Pike & Johnson become connected with the prosecution of these cases?

A. Colonel Musser first applied to us to take charge of them, and be equally interested with us in the fees, whatever his interest might prove to be, but we did not accept any employment in the cases until we were employed directly by the parties themselves, with the understanding, however, with Colonel Musser, that he and our firm were to be equally interested in whatever might prove to be his interest in the fees; we knowing that Porter claimed an interest also under the original agreement between him and Musser; we never had any engagement, understanding, or connection whatever with Porter, and didn't know him or have any correspondence with him until long afterwards.

Adjourned to December 3, 1879, at 3 o'clock p. m.

DECEMBER 4, 1879.

Met pursuant to adjournment.

Present: Counsel for complainant and J. J. Johnson, Esq., for defendant Porter. Whereupon—

The cross-examination of General ALBERT PIKE by Mr. JOHNSON was commenced:

Q. When and where did you first see Porter relative to the subject-matter of this suit?

A. When he came to see me about it in Alexandria as I have stated in my direct examination.

Q. When and where did you first see Mr. Musser touching the subject-matter of this cause?

A. That is more than I can tell you; I know that there was a good deal of correspondence between him and our firm before I saw him, unless I saw him during the war; since my memory has been refreshed, I think I saw him in St. Louis, in 1873, for the first time after the war.

Q. When and under what circumstances were you employed as counsel by the claimants?

A. I had so little to do with the matter and the negotiations that went on between Colonel Musser and the claimants and our firm that I cannot answer the question with any kind of certainty. The correspondence with Musser was submitted to me, and I advised my partners that we ought not to engage in the case at the instance of Col. Musser; and afterwards, when the claimants themselves insisted upon us attending to the claims for them, and I
210 had considered the correspondence between Musser and Porter, I advised my partners that I thought we might honorably engage in the cases. Colonel Johnson, one of my partners, had been the acquaintance and friend of Conrow, Standish, and Parsons, or part of them. I think he knew them all in Arkansas during the war, and it was chiefly on that account that the claimants desired to employ us; consequently I left the whole matter to my partner, Colonel Johnson, and my son, and don't even remember the dates.

Q. At the the time of the employment of your firm by the claimants, had all the testimony been taken and the cases submitted to the commission?

A. No; some time after our firm was employed I examined the papers in the cases and the testimony that had been taken at the instance of my son, and gave it as my opinion that we had a ghost of a chance of getting an award in either of the cases on the testimony that had been taken; and after that additional testimony was obtained by Col. Musser.

Q. Then it is your opinion that no recovery could have been had upon the testimony in the causes at the date of the employment of your firm; is that so?

A. It was, and is now.

ALBERT PIKE.

Sworn to and subscribed before me, this 14th day of December, A. D. 1879.

JNO. A. CLARKE, *Examiner.*

Adjourned to Dec'r 22d, '79, at 11 a. m.

DEC'R 22, '79.

Met pursuant to adjournment, and, by consent of counsel, adjourned to Dec'r 27th, 1879, at 11 a. m.

DEC'R 27TH, '79.

Met pursuant to adjournment; by consent, hearing further adjourned to January 12th, 1880, at 11 o'clock a. m.

JAN'Y 12, '80.

Met pursuant to adjournment, and by consent of counsel, the further hearing was adjourned to January 14th, '80, at 11 o'clock a. m.

JAN'Y 14, '80.

Met pursuant to adjournment.
Present: Counsel on all sides.

R. H. Musser's Testimony.

Whereupon RICHARD H. MUSSER, a witness of lawful age, produced on behalf of complainant, being sworn, says:

Examined by L. H. PIKE, Esq.:

Q. State your name, age, residence, and occupation.

A. My name is Rich'd H. Musser; am 50 years old; my residence is Brunswick, Missouri, and occupation, lawyer.

Q. Are you acquainted with the parties to this suit?

A. I am.

Q. Were you ever at any time employed as an attorney by any one or more of the parties to this suit? If yea, state at what time and under what circumstances your employment began?

A. I was employed as attorney of Mrs. Standish, Mrs. Conrow, and by the curator of S. Kearney Parsons to file their claim and
211 prosecute it before the joint commission — the Republic of Mexico and the United States, under the treaty of July 4, 1868, for the murder and robbery of Austin M. Standish, Aaron H. Conrow, and Gen'l Parsons. I was employed by all the parties about the same time, and it was in the fall of 1869, somewhere between the 11th of Sept. and the latter part of December, I undertook to prosecute the claims for a contingent fee of one-half, and to advance myself the necessary expenses.

Q. Was any person interested with you in the prosecution of said claims? If yea, state who, and upon what terms or agreements between yourself and such person or persons.

A. Yes, sir. Dr. Rich'd H. Porter had proposed the prosecution of these claims to me, called my attention to the treaty, and suggested, being unacquainted with the parties and knowing that I knew them very well, that I should make a bargain with them for

these claims and attend to the prosecution of them, and that he would furnish all the money necessary for the expenses which I had undertaken in my contract with them to advance, and that Porter and I should share equally the fee to be earned, if any.

Q. Did the said persons who employed you execute and deliver to you instruments of writing to evidence the terms of your employment and of their undertakings in regard to your compensation? If yea, state what those papers were; and if you have the said papers, will you now produce them?

A. Mrs. Conrow and Mrs. Standish gave me a power of attorney, coupled with an interest, and, I think, contracts. Mr. Parsons being a minor, the authority was given me by his curator, and the stipulation of the contract was signed by Jackson L. Smith, his curator. Those papers I haven't got. Dr. Porter got them fraudulently into his possession, and has kept them ever since, so far as I know. They may be on file in the State Department. I have seen one or two of them there.

Q. Were the terms of your agreement with Dr. Porter reduced to writing; if yea, can you produce the original or correct copy of the same?

A. They were not reduced to writing.

Q. What, if anything, was done by yourself under your employment in the prosecution of said claims?

A. After procuring the regulations from Washington, and a copy of the treaty, which, I think, I got through Dr. Porter or from Mr. Chiles, by his suggestion he requested me to write to Chiles for it. I wrote a letter to the Hon. Hamilton Fish, the then Secretary of State. As initiatory steps I then prepared the memorials and had them printed into English and Spanish, and forwarded them to the regular channel, the commission. The memorials were objected or demurred to by Mr. Cushing, counsel for Mexico, on the ground that the administrator of the deceased persons had not been made parties. I then took leave, through Mr. Ashton, the solicitor for the United States before the commission, to file supplemental memorials, and
212 which, having had administrators previously appointed, I made them parties. These memorials were sworn to in March, 1870, and filed shortly after they [were] printed. I proceed—to get testimony and support the memorial, availing myself of such information and papers furnished me by the claimants themselves. In Feb'y, 1870, I had taken the testimony of John B. Clarke, Sr., at Fayette, Missouri, which, with the information I got from the claimants, had supplied me principally with the dates and facts stated in my memorial. I followed it up with a deposition of a Captain Siler, who lived, I believe, at Jacksonport, Arkansas. Well, I took many other depositions, but I forget of whom, of these families and friends who knew them; depositions tending to prove the social standing of the parties, and standing on their professions and earnings for their families, their ages showing the expectancy of their lives, upon which to base the theory of damages. Gen'l Clark's deposition was valuable for the facts, but dangerous for some other statements. In his statement he seemed to be under the impression that the party

who attacked and killed Parsons, Standish, and Conrow were robbers, and not Mexican soldiers. To get the testimony necessary to sustain the case so as to make Mexico liable for the outrage under the treaty, I employed, through Gen'l Hardeman, of Texas, a man named Michael Duffey, who undertook, in consideration of ($300.00) three hundred dollars, which I paid him, to go into Mexico, on San Juan river, the scene of the murder, and to procure testimony of the actual facts. Duffey went and procured the testimony of Captain Nicholas Alanes and Jesus Sijirina, and some Americans who were present at the time, and prove that the murder and robbery were committed by Mexican soldiers under the command of Mexican officers, among whom was Don Planton Sanchez military secretary of General Canales. I also took the deposition of Gen'l Sidney Jackman, of San Marcos, Mexico. I took other testimony, but it does not occur to me now. I took all the testimony in the case, with the exception of one letter, and that, I think, was a letter to Mr. Urbahn from the American consul, at either Monterey or Camargo.

Q. Was the name of Dr. Porter inserted in the letter of attorney and agreements as to fees, executed to you by the claimants?

A. No, sir.

Q. What was done by Dr. Porter in execution of this agreement and undertakings with you in regard to the prosecution of these claims?

A. I paid all the expenses myself of procuring the testimony, with the exception of $90, furnished me by Dr. Porter in April, 1870, with which I went to Arkansas and procured the deposition of James W. Siler. I performed all the labor in procuring these depositions, and paid all the money with this single exception; and I paid the parties fee for the memorials, and carried on all the correspondence. I gave my note for the printer's bill.

Q. Do I understand you as testifying that Dr. Porter wholly failed to perform his undertakings and agreements with you in regard to the prosecution of said claims?

213 A. With the single exception of the $90 for the purposes referred to, he failed. His letters to me during the whole of his correspondence indicated to me his inability to raise the money.

(Counsel for Dr. Porter here calls for the production of the letters on that subject.)

Q. Have you the letters referred to?

A. They are in the possession of one of the defendants, Mr. White.

Q. In what manner was the testimony of witnesses taken and in what forms submitted to the hereinbefore named commission?

A. It was taken as form of *ex parte* affidavits of witnesses, and then transmitted to the State Department, and by them sent to the commission.

Q. In a former answer you stated that Dr. Rich'd H. Porter proposed to you the prosecution of the claims referred to. Did he at that time make any statement to you of how and from whom he had acquired information in regard to said claims?

A. I don't recollect that he did.

Q. Did he at any time afterwards make such statements?

A. Some time subsequently he mentioned in his letters Major John Chiles as having failed to raise any money, and that he had refused to interest him in the claims in consequence. Outside of that, I don't think he ever stated to me any particular person from whom he had gotten any information about it. I suppose Dr. Porter, like any other person at Washington city, had his attention called to it, but by whom I don't know.

Q. You have said in your former answer that Dr. Porter had requested you to write to Chiles for a copy of the treaty and the regulations of the commission. Did Dr. Porter assign any reason for referring such request to you, or that would lead you to suppose that Major Chiles would comply therewith?

A. My impression is that he did not. That was the only time I ever heard of Chiles, until subsequently he wrote to me that Chiles had failed to raise money. My impression has been further strengthened from circumstances, that my letter-book don't show a copy of any letter to Major Chiles.

(Here counsel for Dr. Porter calls for the production of said letters to Chiles, if any such letters exist.

Q. Did Dr. Porter state to you at any time that Major John Chiles was interested with him in his prosecution of said claims, or in his portion of the fees expected to be realized from your and his, Porter's, prosecution of said claims?

A. No, sir; I think not. My recollection is, and it is strengthened by abstracts of my correspondence and other circumstances, that shortly after suggested to me to get these powers of attorney,
214 and making the bargain with me to share the fees, if any, as I have before stated. Dr. Porter left St. Louis, and didn't return until the latter part of April, just about the time I went to take Siler's deposition. All the conversation that I could have had with him about Mr. Chiles and Gist (the firm) was at the time we made the bargain. When he left I had only opened the correspondence with the claimants, and it had not resulted in my being retained by the claimants. Before his return, I understood from his correspondence that he was negotiating with Mr. Rittenhouse, and I had no knowledge from Dr. Porter or anybody else of Mr. Chiles having or claiming any interest in the fee until I met Major Chiles here in Washington, 1875. My recollection of the conversation which we ever had about Chiles, or Chiles and Gist, was what Dr. Porter stated, that he expected the assistance of Chiles and Gist pecuniarily and in the prosecution of claims at Washington; but he didn't state to me any interests or what interest they were to have.

Adjourned to Jan'y 15th, '80, at 3 o'clock p. m.

JAN'Y 15TH, '80.

Met pursuant to adjournment.

Present: Counsel for complainant, and J. J. Johnson for def't Porter, and C. Ingle for def't Winder.

Whereupon the examination-in-chief of the witness RICH'D H. MUSSER was resumed.

By Mr. PIKE:

Q. At what time and place was it that Dr. Porter first spoke with you about securing the hereinbefore named claims for prosecution?

A. It was in the latter part of Aug't, 1869, on the street in front of my office, 318 Market street, St. Louis, Mo. It might have been in the early days of September, because my letter-book shows that I had not addressed any of the claimants before the 11th day of Sept., 1869.

Q. What was the date of the agreement between you and Porter about which you have already testified?

A. In the latter part of August or before the 11th of Sept., 1869.

Q. In entering into the said agreement was it the understanding between you and Dr. Porter that you were to secure the letters of attorney and agreements as to fees from the claimants for him and in his name as their attorney?

(Objected, as leading.)

A. No, sir; Porter was no attorney. These parties trusted me personally. It was a professional trust, and if he had made a proposition I would not have acceded to it. On the contrary, he proposed and especially agreed that the powers of attorney should be in my name. I will state further that it was Dr. Porter's understanding that the powers of attorney were to be taken in my name, because he represented me in his contract with Peugh & Rittenhouse as being the attorney-in-fact for the claimants, and himself as acting for me, before he had ever seen the powers of attorney. This representation was about the date of the 20th or 27th day of Feb'y, 1870. It was made in writing, and will be found on the files in the State Depart-
215 ment, and I am acquainted with his signature, and it is signed by him.

Dr. Porter's counsel here calls for the production of said paper.

Witness resuming, says:

When Porter left St. Louis, after making this bargain with me, which I think was about the 1st day of October, 1869, it was before the contracts and powers of attorney had been executed. My letter-book indicates his continued absence in Washington and elsewhere up to about the 18th day of April, 1870, at which time he arrived in St. Louis, the day before I started to Arkansas to get Siler's deposition in the cases.

(All the foregoing testimony as affects Dr. Porter is objected to.)

Witness resuming, says:

I subsequently upon hearing of the relations between him and Mr. Chiles came to the conclusion that he especially desired the powers of attorney, and contracted in my name to exclude Mr. Chiles from any benefit of it.

(The conclusions of the witness are objected to, as inadmissible.)

Q. Did Dr. Porter ever by speech or letter request you to write out an instrument of writing to evidence a contract or a proposed contract on your or his part to give Gist & Chiles one-half of what you and he, Porter, expected to receive out ofthe prosecution of the hereinbefore mentioned claims?

(Objected to, because varying the contract testified to both by Mr. Chiles & Gist.)

A. On the 27th of December, 1869, he wrote me such a letter, dated at New York.

(Answer objected to, unless the original letter is produced.)

Witness resuming, says:

I haven't the original letter, but I have a copy here, which I have examined and compared with the original. The original was placed by Mr. Pike and myself with other letters of Dr. Porter, in the hands of Mr. Stephen V. White, of New York, one of the defendants to this suit.

The contents of that copy and its production are objected to as inadmissible.

Q. Please identify the letter which you have just spoken of, by writing your signature on the margin thereof, and state upon your knowledge and belief, whether it is a true copy of the letter referred to.

A. This is a true copy.

The same is hereby offered in evidence by counsel for complainant, and marked Exhibit "A" to witness' testimony.

Q. What response, if any, did you make to the request referred to by you in your last answer?

A. I don't remember that I made any response to that at
216 all. If I did, in all probability Dr. Porter has got the letter
My abstract of correspondence in the letter book does not show any.

Q. Can you speak with any greater degree of certainty as to whether or not you wrote out any such instrument of writing or entered into any such proposed contract?

A. I think I did not.

Cross-examination of Col. MUSSER.

By Mr. JOHNSON:

Q. Please state when and where you first became acquainted with Dr. Porter.

A. It has been so long ago, Mr. Johnson, that I can hardly tell. It was nearly forty years ago, while a school boy in my native town, in the State of Kentucky.

Q. Were you what might be termed on intimate terms with him?

A. No, sir; not until after the war.

Q. Are you acquainted with Thos. P. McManus, one of the def'ts to this suit?

A. Very slightly.

Q. What interest, if any, had McManus in these claims?

A. None that I know of; I did not know or hear of McManus until in 1876, I believe.

Q. Did McManus, to your knowledge, ever perform any services in these cases with a view to prosecute to ultimate success?

A. Not that I know of; I have seen some affidavits said to have been procured by McManus which were pretended to have been filed before the commission, but I didn't regard them of any value, even if they had been filed; I regard them as irrelevant, incompetent, and hearsay, and if they had been competent, relevant, and direct, would have only cumulative, even if they had been permitted to be filed, to the evidence already procured by me through Mr. Duffy, which had already been filed in proper time and gone before, and been considered by the commissioners.

Q. State, if you please, when and where you first made the acquaintance of Major Chiles?

A. I knew Chiles very slightly and casually in 1861, in the Confederate army, in Missouri; my active acquaintance began with him here in Washington in 1875; I didn't know who he was when he was referred to by Dr. Porter in his correspondence with me.

Q. Tell us, if you please, what, if anything of your own personal knowledge, Chiles did towards preparing, looking after, or prosecuting the cases in controversy.

A. Of my personal knowledge, I don't know anything. From 1861 to 1875, I had not seen him. In 1875, when I saw him, the claims had been submitted to the commission and they had disagreed and they were referred to the umpire.

Q. Are you acquainted with C. E. Rittenhouse and S. A. Peugh, or either of them, and if so, when did you make their acquaintance?

217 A. A correspondence between Rittenhouse and Peugh and myself in the spring or summer of 1870; I became personally acquainted with Peugh in August, 1875, when I was here; I don't think I met Mr. Rittenhouse until the winter of 1876, and 7, when I came here.

Q. What, if anything, of your personal knowledge, did Rittenhouse and Peugh, or either of them, do towards hastening the cases in controversy to a successful termination?

A. To my personal knowledge I don't know of anything, excepting they may have filed some papers as evidence, but I don't know of their having done that even.

Adjourned to Jan'y 16, '80, at 10 o'clock a. m.

JAN'Y 16, '80.

Met pursuant to adjournment. Present: Counsel for complainant, and J. J. Johnson for def't Porter, and C. Ingle for def't Winder.

Whereupon the cross-examination of Colonel Musser was resumed.

By Mr. JOHNSON:

Q. Are you acquainted with Chas. H. Winder; if so, when did you first make his acquaintance?

A. I first made his acquaintance, personally, I think in August, in 1875, when I was here in Washington. I had had some correspondence with him previously.

Q. State if you have any knowledge relating to Winder's connection with these cases?

A. I have no personal knowledge outside of a few letters received from him, and the statements made by Porter.

By Mr. INGLE:

Q. Have you those letters in your possession?

A. No, sir; I think the first letter, the 24th Feb'y '72, of which I spoke yesterday, was transmitted by me to one of the claimants, Jackson L. Smith, who was the guardian of Parsons and the curator of his estate. The other letters, I think two or three, I sent to Messrs. Pike and Johnson, and they were by them turned over to White.

In regard to the statements made by Porter, they were in this manner: Porter brought a suit against Mrs. Standish, one of the claimants, and myself, in the St. Louis circuit court, to enjoin me from collecting one-half of her award which she had assigned me, or if she had not assigned to me, to enjoin her from assigning her one-half. Upon the trial Mr. Porter testified for himself.

(Here counsel for Porter objects to any detail statement of the witness of what Porter may have testified to on the witness stand in that case).

Witness resuming says: I was present at the trial and heard his testimony; being an interested party, took notes of it. He testified to the employment of Peugh and Rittenhouse, to whom he had agreed to give 25 per cent. of the fee; that Peugh and Rittenhouse had retained Winder (Charles H.) He stated that in the fall of 1871 that he came to Washington and found Winder engaged in writing the arguments; that Winder was dissatisfied with his arrangements with Peugh and Rittenhouse; that he was unwilling to proceed with his labors unless he had a more certain arrangement made for his compensation. He stated that he made an arrangement
218 with Winder and that Winder continued his work and finished the arguments which he, Porter, had printed in Feb'y, 1872; that he, Porter, paid for printing the argument; the copy of the argument as printed was shown to Porter in the trial at the time he was testifying, and he identified it as the same Winder had drawn, and which he had printed; this is the same printed argument that I have seen on file in the records of the commission and in the State Department at Washington. At the same trial, Porter having alleged in his bill the expenditure of large sums of money in the prosecution of these claims, and having testified to somewhere between $25,000 and $35,000 of expenditures by him. Being cross-examined by my own counsel in the case to the manner in which he had expended this money, and called upon for an itemized statement of his expenses, he stated that he had made a bargain with Charles H. Winder in compensation for and in consideration for his services rendered in these claims to allow him five per cent. of the

whole three awards, or ten per cent. on one-half of it. He stated in that connection that this agreement with Winder made a part of the expenses which he had incurred in the prosecution of these claims. He said in that connection the amount owed to Winder and others would cover all of the award that would be left after the claimants got their share.

Cross-examination of Colonel MUSSER as to parties other than Winder was resumed by Mr. JOHNSON:

Q. State as near as you can the month and year when Porter called to see you in Missouri concerning those cases, and by whom, if any one, he had been recommended to you.

A. It was in the latter part of August, 1869, or the first of September. I don't know personally who recommended me to him. I can state that I was acquainted with him when a boy.

Q. Give, if you please, a detailed statement of the conversations at that interview relating to those cases.

A. Well, sir, Porter came to me, asked me if I didn't want to make some money, mentioning, I think, $100,000 as the sum to be made. I told him if it could be done honorably I would like to undertake it. He said it was perfectly honorable and legitimate. I then asked him to explain it to me. He told me he was just from Washington city; that there was a treaty existing between Mexico and the United States under which a joint commission was about being organized to investigate mutually claims of citizens of one government against the other; that the claims of widows and heirs of General Parsons, Colonel Standish, and Mr. Conrow could be established before that commission and damages awarded; and as I had served with all three of those gentlemen in the army, and knew some of their families personally, that if I would make a contract with them and get powers of attorney and agreement to me for half of the award, he, Porter, would advance all the necessary money to pay the expenses of establishing the claims, and that we would divide the fee earned between us. He especially stipulated
219 that I should take the powers of attorney and contract in my own name; that was our bargain, entirely in parole, never reduced to writing. I think at the same time he showed me a copy of the treaty of July 4, 1868.

Q. What were the reasons assigned by Porter, if any, why he wanted the contract and powers of attorney especially in your name?

A. He didn't assign any reason.

Q. Was the contract between you and Porter for fees to be divided equally?

A. Yes, sir.

Q. What duties were you to perform, and what duties were Porter to do?

A. I was to prepare the cases, the memorials, to get up the evidence. He was to furnish all the money necessary for the expenses, a duty he heroically did not accomplish. He was to give me such assistance, outside of furnishing the money, as he could.

Q. Did the claimants, or either of them, see you about these claims before your contract with Porter?

A. No, sir; they evidently never heard of them until I wrote to them about it. Mrs. Standish I saw personally at the Laclede Hotel a day or two after my conversation with Porter, and before she had gotten my letter. I spoke to her myself, explained the treaty to her, and proposed to undertake it for herself and nephew. She was unwilling and unable to incur any expense. I proposed to advance the expenses myself, supposing at the time that Porter had the means to accomplish his part of the agreement.

Q. Mr. Gist in his testimony states that he had prepared a memorial, or memorials, for the parties, and sent out by Porter; what have you to say about that?

A. I don't know, personally, what Gist did. Porter furnished me with an abstract statement of the requirements of the commission, as to the form of the memorials, which I think he told me had been prepared for him in Washington, and, if I recollect right, by Mr. Gist.

The abstract merely enumerated the requirements of the memorial; for instance, it required the place and date of birth of the claimant. If he was foreign born, as was the case of Standish, the time and place of his naturalization; his professional occupation; the facts and dates of marriages and births of children who were claimants; the amount of money or property in possession of deceased, and the date and details, as well as the place of robbery and the murder, and the fact that they were murdered by Mexican authorities, besides specific claims for damages for loss of life and property. I availed myself of this abstract in drawing my memorial, as well as of the assistance of one of my brother attorneys in St. Louis, Mr. George W. Hall, who was drawing memorials in similar cases at the time.

Q. While you were attending to the business on the other end of the line, who was to have charge of it here?

220 A. There was no stipulation or agreement upon that point at all.

Q. Who, as a matter of fact, did attend to it, if any one?

A. I unfortunately trusted too much to Mr. Porter in that regard. I attended to it, however, mainly myself, by the transmissal of evidence and papers and correspondence with the commission and State Department, and through Mr. J. Hubley Ashton, the American solicitor. Up to the time in 1872, when I called Pike and Johnson to my assistance for the protection of myself and my clients. I corresponded with Rittenhouse and Peugh without any knowledge of their peculiar relation with Porter up [to] the time I learned from them that Porter had undertaken to sell my interest out to them. They repudiated me, and I then repudiated them.

Q. What services did they render you in these cases?

A. I don't they rendered me any. They rather retarded and embarrassed me, and colluded with Porter to defraud me. They could not have rendered me any service outside of possibly having filed before the commission such papers as I had procured in evi-

dence in shape of *ex parte* affidavits, and such correspondence as they had with me.

Q. When did you first learn, and from whom, that Rittenhouse and Peugh were acting in collusion with Porter to defraud you, and when did you repudiate them?

A. On the 15th day of Feb'y, 1871, Rittenhouse wrote to me enclosing this paper dated 16th Feb'y, 1870, which is herewith filed, marked Exh. R. H. M. No. 2, as part of witnesses' testimony.

The endorsement, "agreement between Porter, Rittenhouse, and Peugh," in the handwriting of L. H. Pike, Esq., and the words "Exhibit M" are in T. B. Childress', of St. Louis, Mo. In that contract Porter represents himself as being substituted in my powers of attorney, upon which he acknowledges to have received $300 from Rittenhouse and Peugh, his statement of the fact of substitution is a falsehood. He had never seen the powers of attorney, because they had not been executed and transmitted to me at St. Louis, when he had left that city. He had no authority from me to make such a contract with Rittenhouse and Peugh, and had concealed the fact from me nearly a year; that he had made any such pretences or had such relations with Rittenhouse and Peugh. I wrote to Rittenhouse and Peugh, stating the facts, that whatever money Porter had received from them on the strength of that contract, was received under false pretences; that Porter had never seen my power of attorney and had never been substituted at that date. I stated to them my agreement and contract with Porter, recognized his right to sell them his portion of his own interest, but none of mine, coupled with the duty always to reimburse me for my outlays in procuring evidence and furnishing money for the prosecution of the claims. I enclosed them at the same time a letter I had received from Porter denying the fact that he had
221 made that contract with them admitting that he had gotten $300 from them, and claiming that they had loaned him the money on his personal, private, and individual credit. I submitted to them that they might judge between the truth of their own statements and Porter's; that one of them was evidently telling a falsehood; both Rittenhouse and Peugh have since told me that without investigating the question of veracity between themselves and Porter, they simply turned my letter and enclosure over to Mr. Porter, whom they recognized as the sole attorney and representative of the claimants. They, therefore, denied all authority in me and set up for themselves and Porter, and I then employed Pike & Johnson.

So much of the answer as is not responsive and argumentative and all of the answer which refers to Porter is objected to, as the question in no manner, shape, or form calls for any criticism from the witness as to Porter.

And the question is repeated.

A. I think I have stated that it was after the 15th day of Feb'y, 1871, that I learned of the contract between Porter and Rittenhouse and Peugh, and it was a few weeks afterwards or a short time sub-

sequently that the correspondence ceased. I have seen a deposition of Peugh's read on behalf of Porter at St. Louis, in the circuit court, in the case of Porter against Standish and myself, in which he testified at that time the date spoken of that he and Mr. Rittenhouse denied any authority in me over the claims, and about the same time I wrote to Rittenhouse and Peugh that I wouldn't recognize them or have anything more to do with them, or words to that effect. I think I sent them a formal revocation of any pretended authority which they may have had.

Q. When and to whom were the memorials sent to be filed in these cases?

A. My impression is that the original manuscript of the memorials was sent through the State Department; I think the printed copies were sent through Rittenhouse; I find on my abstract that some of the affidavits were sent through Porter from St. Louis to Washington, and some of the *ex parte* affidavits was sent to Rittenhouse and by him to the State Department. All papers had to be originally filed in the State Department. I found by my abstract that I had prepared the memorials as early as March 10, 1870, and had them subsequently translated into Spanish and English.

Q. Were these memorials, or any of them, returned to you for correction or corrections, and, if so, who returned them, and how often were they returned?

A. I think they stand as they were originally filed: I will state, as I stated the other day, that I had to file supplemental memorials.

Q. Look at the two letters now shown you and state in whose handwriting the body of them is and whose signature appears thereto.

A. They are mine.

The same being herewith filed, marked Exhibits J. A. C., No. 1 and 2.

222 EXHIBIT J. A. C., No. 1.

SAINT LOUIS, Mo., *May 28th*, 1870.

C. E. RITTENHOUSE, Esq., *Washington, D. C.*

DEAR SIR: I hand you enclosed duplicate statement of Capt. James W. Siler, applicable to the cases of Conrow and Standish, as also for the proofs in explanation of the letters to Jackson L. Smith, as curator of S. K. Parsons; I also enclose letter from U. S. consul at Monterey, enclosing copy of letter written to Mr. Urbahn, Oct. 21, 1869. These make our proofs complete. I will furnish a further proof, in rebuttal, of the supposed pretext that these gentlemen were spies, to the effect that they were all unacquainted with either French or Spanish languages. I also send copy of the appointment of William P. Pitts as commissioner of the United States for the district of Missouri. The law does not require commissioners to use a seal, although it is a common thing for them to do so. Pitts was a recent appointment, and had not procured one. The regulations require, I understand, the memorials to be filed by the 31 inst. The proofs can be filed at any time afterwards. I think the proofs

complete, except on the Com'r Rowe case, which is moved sufficiently by proofs properly made in the other case. The commission may probably consider all three cases at once. I think the earlier they are submitted the better.

This case has been gotten up with great labor and expense, and so far as I can judge, is well prepared, as in the nature of things it could be.

I shall be anxious to hear from you when it is submitted, and take such further suggestions as may be made by Mr. Ashton.

I remain, your ob't serv't,

R. H. MUSSER.

EXHIBIT J. A. C., No. 2.

OFFICE OF R. H. MUSSER,
Attorney-at-Law, 318 Market Street,
ST. LOUIS, *Feb'y* 22, 1871.
FEB'Y 25, '71.

C. E. RITTENHOUSE, *Washington, D. C.*

DEAR SIR: A friend of mine, who is interested in some claims before the Mexican Joint Commission, informs me there is a rule requiring the powers of attorney to be filed with the papers in every case when the memorial is sworn to by an attorney, and not the applicant himself.

Dr. Porter informed me on Sunday he was going to Washington on that day. I wish you would demand the powers of attorney, which he says he has, for the purpose of filing them.

Your ob't serv't,

R. H. MUSSER.

223 Q. Look at the letter now handed you, and state whose handwriting it is in, and to whom was it addressed, if you know?

A. It is mine. I think it was addressed to Rittenhouse and Peugh.

(The same being offered in evidence, filed and marked Exhibit J. A. C., No. 3.)

EXHIBIT J. A. C., No. 3.

SAINT LOUIS, *May* 21, 1871.
MAY 13, 1870.

DEAR SIR: I hand you enclosed the memorials and proofs in the cases of S. K. Parsons, Mrs. Standish, and Mrs. Conrow's claims against the Mexican government. I have just returned from Arkansas, where I succeeded in finding Capt. Siler, who has been an officer in the republican army of Mexico; and after diligent and expensive labors, I have a complete chain of proofs of the killing and robbery of Gen'l Parsons and his party by the statements of Colonel Sanchez, made to Capt. S., as also by established and current report and rumor in the neighborhood where the murder and robbery occurred. There is, I think, a complete cha-ne of proofs,

beginning with Gen'l Clark's statements, who is a person, no doubt, well known to Mr. Cushing, the solicitor for Mexico, and to Mr. Wadsworth, — the American commission, and ending in Siler's statements of Sanchez's admissions.

These two witnesses know nothing of each other; one lives in Missouri and the other in Arkansas; they are different in their pursuits and associations; one is twenty-seven and the other sixty-six years of age, yet their statements corroborate in their scope and effect.

These three cases all depend on exactly the same proofs; I have had them stipulated; but it would facilitate all hands if the commission would consider them all at once. If it should be necessary to make Capt. Siler's statement fuller, I suppose I could do so, and I will have Governor Clayton and other distinguished citizens of Arkansas certify to and endorse his character and credibility. The triplicate statements of Siler, accompanying the memorials of Mrs. Standish and Mrs. Conrow, will be here by the next mail, and will be forwarded to you.

My attention has been called to the suggestion of Mr. Ashton, that the memorials should be sworn to by the claimants.

The memorial was sent to Mrs. Conrow, with instruction to make oath before a commissioner of the United States for Missouri. It was returned to me by her father; that no commissioner was inreach. I. L. Smith, curator of S. Kearney Parsons, has not *been* the evidence and proof of the killing of Gen'l Parsons. I consulted with him at Jefferson city, and we concluded, as he was acting fiducially—representing his ward without other personal inter-
224 est—it would be better and more consistent for the solicitor who has collected the proofs and talked with the witnesses than for him. This was the view I took of it myself.

I think the commission will take the same. The other applicant, Mrs. Standish, makes affidavit herself, and proves but the things which are of her own peculiar knowledge—such as her marriage, the birth, names, and ages of her children.

I suppose the commission will take judicial knowledge that the United States was at peace with Mexico, and had been since 1847.

The proofs are on the Mexican authorities to *make* that the party were spies, in the pay of the French. But I have preferred to make proofs which will show such a state of things highly *important*, if not impossible.

Gen'l Parsons had not reached Monterey in July, and at that time Maximilian in *Mexico City*, and communication with the French was impossible. His rank and character, and the rank and character of his companions, preclude the possibility of such a thing.

I will be obliged for any suggestions upon which I could act to make the proofs more complete, without being purely cumulative.

I remain, yours,

R. H. MUSSER.

Adjourned to Jan'y 19th, 1880, at 2 o'clock p. m.

JAN'Y 19*th*, '80.

Met pursuant to adjournment.

Present: Counsel for complainant, and Mr. Johnson for defendant Porter.

Whereupon the cross-examination of Col. MUSSER was resumed.

By Mr. JOHNSON:

Q. Did not Dr. Porter, in the winter of 1869 and '70, call to see you in St. Louis, Missouri; if yea, did he not say that he had come there with a view to obtain contracts from Mrs. Standish, Conrow, and Parsons for the purpose of prosecuting claims of the respective parties against the Mexican Government before a joint commission at Washington?

A. No, sir; I saw Porter there early in the winter. It might have been in November; not later. I might as well state that his conversation in relation to these claims occurred in the latter part of Aug. or the early part of September, 1869, and I might further state that he didn't say in that conversation that he had come for that purpose, on the contrary, he proposed to me to go and get the claims in my own name, and that he would furnish all the money necessary, and that we would share the fees equally.

Q. In that interview did he or not not say that he desired to employ an attorney simply for the purpose of preparing all necessary papers and to superintend the taking of evidence that was necessary to be used in proving up the cases, and did not said Porter then and there, employ you for this purpose and at the same time, give you forms of powers of attorney to have the respective parties to
225 execute the same, giving said Porter power to act for said parties, and securing also to said Porter, the assignment of one-half of the net proceeds of any judgment that might be rendered on behalf of the claimants, and that Porter was to pay you for your services and all expenses incurred by you?

A. No, sir; nothing of the kind occurred.

Q. State, if you please, whether or not the understanding was that you were to obtain the powers of attorney and contracts, but in so doing you were in no way principal in the arrangement?

A. No; nothing of the kind occurred.

Q. State, if you please, whether, when Porter was informed that the powers of attorney had been executed by you, he did not complain bitterly for having taken them so, and said that you had violated his instructions, and did you not then undertake to explain the cause of taking said powers of attorney in your name, and finally said to said Porter, that the power of substitution was full and ample, and that to carry out Porter's instructions you would and did substitute said Porter in your stead?

A. No, sir; Porter never made any bitter complaints; he came in my office one day and mentioned the powers being in my name. I told him that was our understanding, that it was a professional trust reposed in me by my client, and under no circumstances would I have asked them for a power of attorney for [illegible] or anybody else.

The drift of his conversation was that the powers of attorney and contracts being in my own name, it did not appear that he had any interest. I thereupon gave him a letter signed by myself in which I stated that Dr. Porter was equally interested with me in the fees contingent that might be earned under those powers and contracts. He seemed, from his conversation to me, to be under the impression that having the papers in my own name, by some accident or design he might be deprived of any interest in the fee.

Q. Have you in your possession all of Porter's original correspondence with you relating to these claims; if not, when and to whom did you part with possession of them?

A. I have not. I retained all of his correspondence excepting one letter which I sent to Rittenhouse; the balance was handed over by Mr. Pike and myself to Stephen V. White, the def't in this suit, but I have here copies of them which I know to be copies excepting that one.

Q. For what purpose were these letters handed over to Mr. White?

A. For Mr. White's information and any use which he might make of them, or his dealings with Mr. Porter. I will state that Mr. White paid me for my interest in the claims and I thereupon turned over to him all the papers relating to them.

Q. Did Porter's letters to you form a part of the consideration that led to the purchase of your claim to White?

226 A. No, sir; I think not. My recollection is that after White had bought me out and drawn his check for the money we voluntarily turned over to him all the papers, along with our assignments of our interest.

Q. Did not Porter some time in 1870–'71 write you a letter criticizing your action in taking the powers of attorney in your name instead of his?

A. He may have written such a letter after I detected him in his rascalities and frauds. He wrote me two or three letters containing the most shameful falsehoods and, I might say, blackguardism.

Q. Did you turn over these letters to White among the other correspondence?

A. I think I did.

Q. Who prepared and filed the argument in the spring of 1872 in these cases?

A. Of my personal knowledge, I don't know.

Q. Was Porter in St. Louis in 1872, after you had associated Messrs. Pike & Johnson with you?

A. I don't know; I had nothing to do with him at all personally after the association of Messrs. Pike & Johnson. There was an effort through Col. Renicks to have an arbitration. I very soon saw that he, Porter, wanted to blackmail me and annoy my client. I think he wrote to me if I would pay him back what money he expended that he would release all claims upon me. I think he fixed his price at $1,500. I think that was my last correspondence with him. I didn't accept the proposition to pay him $1,500, but did propose

to pay him what he had expended as soon as it could be ascertained.

Q. Did you ever have any business relations with Renicks? If so, how often?

A. I had a great many business relations with Renick. I attended to business for him as guardian of Charles Rannells, professionally; I was his counsel, as assignee of Thorpe, in bankruptcy. I attended to a great many cases for him.

Q. When was the time closed for taking the proofs and for submitting them before the commission?

A. I don't know the date. I will only state that my only information upon that point comes from a decision made by the umpire, Sir Edward Thornton, which is called to my attention and which I have seen, of Charles E. Morton against the Republic of Mexico, case No. 895, rendered on the 15th day of June, 1874.

Q. Who prepared the printed argument submitted by Charles H. Winder, Esq.?

A. I don't know, personally; but suppose Winder did.

Q. Where, when, and from whom did Porter obtain the substituted powers of attorney?

A. I think in the latter part of June or early part of July, 1870, Porter came to St. Louis and was out of money. He proposed to me if I would let him take those powers of attorney and papers relating to these claims, with proper authority, to Washington city, Philadelphia, or New York, he would be able to raise money enough on his share of the fee to reimburse me for my expenditures
227 and to pay the expenses of prosecuting the claims as he had undertaken; he got a pass to Philadelphia through a man named Pulliam, who had a patent car coupler; he had pursuaded Pulliam that he could sell that patent to some railroad company at Philadelphia; I loaned him $45 in money; he then said that wasn't enough; I gave him my check for $65 in addition; he gave me a draft on New York for $110, and requested me, however, not to forward it until he could get there; I entrusted him with the powers of attorney, with my endorsement of substitution on them, for that purpose only; he came to Washington, wrote me that he was unable to raise money there, and he went to Philadelphia and wrote me the same thing from there; he finally went to New York, with no better results, and wrote me that if I would raise money and carry on the claims that he would come home and deliver up the papers and abandon them. I wrote to him that I could raise the money, which I did accomplish, without his assistance. This, I think, was in July or August, 1870. His letters, at that period, indicated a state of despondent impecuniousness; as I held his draft for $110, he succeeded in raising $100 of it, and sent me the money. He came back to St. Louis shortly afterwards and delivered up the papers, to wit, the powers of attorney, with the endorsement of substitution on them, which I neglected to erase from the papers, and left them in charge of a young man named Ellerbe, in my office. A short time subsequently he come to me and asked me to let him have the papers to put into Renick's safe, as I had no safe in my

office. I refused, and told him that I would keep them myself. A few weeks afterwards I learned from Ellerbe that Porter came there and got them by representing that he had my permission for it. I afterwards heard him testify in his case against Standish in behalf of himself, as follows: Speaking in reference to the Standish power of attorney. I carried power of attorney to Washington; we returned to St. Louis in March, 1870; left it in Col. Musser's office in his possession, with Mr. Ellerbe; I went to the office and found the papers lying around loosely, and with no care. I did not think they were properly cared for, so I took them. This was in April or May, in 1870. I have had possession of them ever since.

So much of the answer as read from a paper by the witness, and so much of the answer as details contents of letters written by Porter to witness, and which witness has, by his own volition, placed out of his, witness', possession, objected to.

Q. Who prepared and filed the opening brief of March 15th, 1871?

A. I don't know, of my personal knowledge.

Q. Did you prepare it?

A. No, sir; there was no occasion for it, then; I was the attorney of record for the claimants, and if anybody chose to voluntarily intermeddle with my cases it was without my knowledge, and I knew nothing about it.

Q. Who prepared and filed the argument of March 30, 1872?

228 A. I don't know, of my personal knowledge.

Q. Did not Porter, when he first visited you in St. Louis, give you power of attorney and contracts with his name on each of them to be executed by the claimants?

A. Most emphatically no; I am not certain whether I used blank printed forms for the powers of attorney or not; I rarely do so in my practice. My recollection is that I wrote out in manuscript the contract in each case, but I am inclined to believe from my best recollection that the powers of attorney were altogether in manuscript and in my handwriting.

Q. Look at three letters now handed you, dated Jan'y 7th, Feb'y 2d, and Feb'y 17th, 1870, and say in whose handwriting they are.

A. They are in my handwriting.

The same being offered in evidence and marked Exh. J. A. C. Nos. 4, 5, and 6.

EXHIBIT J. A. C. No. 4.

SAINT LOUIS, MO., *Jan'y* 7, 1870.

DR. R. H. PORTER,
Care F. H. Portee, 132 *East* 29*th St., N. Y.*

DEAR SIR: All three of the cases, Mrs. Standish, Mrs. Conrow, Gen'l Parson's son, are referred to the joint commisson and the treaty between the United States and Mexico. I have been unable yet to find Col. Williams; everything has been done that I can [for] her. It is important that the arrangements shall be made for hunt-

ing up and taking the testimony; I wish you were here, as I have so many engagements. I cannot give attention to them all and go away to hunt up witnesses. I shall get the statement of Gen'l Clark in a few weeks, which is fuller than I thought it would be; if I can only find Williams I can make full proofs without sending to Mexico. I learn from Governor Reynolds that there will be proofs of claims enough made to purchase the States of Sonora, Simalva, and Darango.

It is of the first importance to me to have some money; let me hear from or see you.

Yours, R. H. MUSSER.

EXHIBIT J. A. C. No. 5.

SAINT LOUIS, Mo., *Feb'y 2d*, 1870.

DR. R. H. PORTER:

DEAR SIR: I have had no advices from you of late. I have at last found Col. Williams, at Macon, Ga. I will soon, with good luck, have his statement. I have also found Capt. Siler, a Federal officer, by whom I can prove similar facts; I have made his arrangements for his statements; I will take Gen'l Clark's myself next week. All this involves expenses, and I now need your assistance. The powers of att'ys and contracts I have are full and complete, powers irrevocable. As soon as I get the proofs and memorials all will be ready and complete.

I am anxiously awaiting to hear from you.

Your ob't serv't,

R. H. MUSSER.

229 EXHIBIT J. A. C. No. 6.

SAINT LOUIS, Mo., *Feb.* 17, 1870.

DR. R. H. PORTER, *Washington:*

I found your several letters on my return home. I have been to Howard county and taken the depositions of General John R. Clark, which is fuller and better than I thought. I find from circular sent me that the time for filing proofs is extended to June 1, 1870, and for filing memorials. I look with anxiety for your further letters, and for your arrival here.

Your ob't serv't,

R. H. MUSSER.

Q. Also letter now handed you, June 1, 1875, and say in whose handwriting that is.

A. This letter is dated June 1, 1875, and addressed to David Quisenberry, Richmond, Ray county, Missouri, and was written by me. Mr. Quisenberry was the father of Mrs. Conrow, and her business agent, Porter, had, by threatening letters——

(Counsel for Porter here objects to witness explaining the letter offered, and also the contents of any letter which Porter may have written, the same not being produced.)

Witness resuming, says: One letter in particular had been referred to me, in which he had threatened to defeat their awards unless one-half of them was assigned to him. I am not certain whether this letter was handed to White with the others, or returned by me to Quisenberry. My clients were women, very nervous, hysterical, afraid of losing their money, and were kept in a constant state of torture and anxiety by Porter's letters and threats.

(The said letter being here offered in evidence, and marked Exhibit J. A. C., No. 7.)

J. A. C., No. 7.

R. H. MUSSER, Attorney-at-Law, 120½ North Third Street,
ST. LOUIS, *June* 1, 1875.

DAVID QUISENBERRY, *Richmond, Ray County:*

Since my former letter Dr. Porter has not filed his consent to the terms of arbitration consented to by his counsel with me, and I have withdrawn mine.

The claimants have it in their power to determine, to whom they gave the powers and with whom they gave the powers. If you will send me the affidavits I requested, which I think is not unreasonable, I will take the risk of their being used in evidence. Porter is powerless to injure me, or in any way affect the award due Mrs. Conrow and her children. Having always acted in good faith and with fairness, I do not think Mr. Porter ought to be recognized by you in any way.

Your ob't serv't,

R. H. MUSSER.

230 Q. Look at letter dated March 9, 1871, to C. E. Rittenhouse and say in whose handwriting is the same, and also look upon the back of said letters, written in pencil, and say if you know in whose handwriting the same is, and whether the same is not a copy of a letter written by Rittenhouse in respondence to yours of the 9th, 1871.

A. The letter is in my handwriting. I received a letter from Rittenhouse about the purport of what is endorsed upon the back of that letter. I don't know in whose handwriting the endorsement in pencil is.

(The same is here offered and filed in evidence, marked Exhibit J. A. C., No. 8.

EXHIBIT J. A. C., No. 8.

OFFICE OF R. H. MUSSER,
Attorney-at-Law, 318 Market Street,
ST. LOUIS, *March* 9, 1871.

C. E. RITTENHOUSE, *Washington, D. C.*

DEAR SIR: Please inform me if Dr. Porter has handed you the papers, contracts, and powers of attorney from the heirs of A. H.

Conrow, A. M. Standish, and M. M. Parsons in the claims against Mexico, in accordance with my instructions.

Please return me the letter enclosed you in my letter of February 27th. It has become important for me to present it for some proceedings here.

I remain your ob't serv't:

R. H. MUSSER.

Endorsement in pencil on back of letter:

WASHINGTON, D. C., *March* 16, '71.

R. H. MUSSER, Esq.

DEAR SIR: Yours of 9th inst. rec'd; all the papers will, I suppose, be available when needed. The old adage, "too many cooks spoil the broth," may apply in this case, and as Doct. P. I hear has offered to sell out to you, I w'd advise you buying him out. He holds our offer to relinquish by his paying us am't on demand for time and trouble.

Yours, &c., C.

Q. From the 10th day of Dec'r, 1869, to the 4th day of July, 1870, state fully and in detail everything you had done in preparing these cases for a final result.

A. I got Clark's testimony sometime in Feb'y. I had filed the claims with the State Department. I had taken Siler's deposition and had prepared and printed memorials, and had taken a lot of other testimony; I had written a great many letters in hunting up witnesses; I had not taken the testimony then, showing the earnings of the deceased gentlemen in their professions, or the *ex-parte* affidavits of Jackman or Duffey, nor the affidavits that had been taken in Mexico by Mr. Duffey which was taken subsequently to the 4th of July, 1870. I had taken previously to this date (4th July, '70) proofs of the marriage of the claimants with the deceased gentlemen and the affidavit of John Allen.

Adj'd to Jan'y 20th, '80, at 9.30 a. m.

231 JAN'Y 20, '80.

Met pursuant to adjournment.

Present: Counsel for complainant and Mr. Johnson for defendant Porter.

Whereupon the cross-examination of Col. MUSSER was resumed by Mr. JOHNSON:

Q. Were the proofs all taken and filed by March, 1872?

A. I don't recollect the dates, but I think not, because Dr. Lieber, the umpire of the commission, died, and the commission practically suspended until the appointment of Sir Edward Thornton, the British minister, as umpire. My impression is I furnished and filed testimony as late as 1873 and '74 to the time the cases were submitted to the commission, after which no more evidence could be offered.

Q. Up to the 1st day of April, 1872, what more was necessary to be done before the claims were ready for hearing?

A. The proofs were necessary to be taken in Mexico, which I had taken by Mr. Duffey, of the actual murder of the three gentlemen by Mexican soldiers under the command of Mexican officers in the service of the Liberals. In Gen'l Clark's statement he was under the impression that the parties who attacked them were robbers; the Mexican Government had denied that the outrage was perpetrated by Mexican officers and soldiers. They had undertaken to prove that the gentlemen killed were spies of the French, and to prove an *alibi* for Don Planton Sanchez, who was military secretary of Gen'l Canales and lieutenant colonel, and charged with perpetating the murders and sharing in the booty. And also the affidavit of Jackman and the proofs of the social standing and learnings of the gentlemen in their professions.

Q. What other depositions did you take after May 9th, 1870?

A. I don't recollect the dates, Mr. Johnson; I know that I took them all. I took Siler's deposition about May 1st, 1870. I filed Clark's deposition, which I took the second time, the first containing some extraneous matter which I did not want to go to the commission. I afterwards took the *ex-parte* affidavits of J. L. Minor, Wm. E. Dunscomb, Thos. L. Crawford, G. W. Ho——, Phil. E. Chappel, J. F. Rodgers, P. J. Miller, E. L. Edwards, J. E. Belch, J. B. Reed, Allen Ewing. I filed a certified copy of Standish's declaration to become a citizen of the United States in the circuit court of Cole county, Missouri. Also filed the affidavits of James Harding and Wm. Vogt, the letter of the United States consul at Monterey to myself, the affidavits of Michael Duffey, Martin Van Merrick, and Henry A. Bragg.

Q. Did you not take, before May 9th, 1870, the following depositions: Siler, Clark, John Allen, J. E. Black, Quiesenbery, Conrow, H. C. Ewing, and Dupont?

A. I don't know that I did; I think I took them afterwards.

Q. Was it not your purpose and object in advising the parties to revoke their former letters of attorney and to execute one to Messrs. Pike and Johnson to get rid of Porter entirely?

A. Yes, sir; I will state in that connection that Porter had behaved so dishonorably with me that he had entirely failed to
232 furnish any funds and was endeavoring to defraud and supplant me and had given my client persistently such annoyance and was so entirely untrustworthy and dishonest, and having stolen the papers executed to me by my clients, and that they were in such a state of appehension by reason of his importunities and threats that I felt it due them for their own safety and peace to interpose Pike and Johnson, disinterested and honorable attorneys, and as the attorneys-in-fact of the claimants, and not involve them in my quarrel with Mr. Porter any further than I could help. Porter had denied his contract with me, both to them and others, and I felt that he was stopped from setting it up any more. I also felt that I was somewhat responsible for the annoyance he gave the claimants. I wanted also Pike and Johnson, in whose in-

tegrity and ability I had confidence, to protect my own interest as well as the interest of my clients against such creatures—Rittenhouse, Peugh, and others whom Porter had interested in the cases here in Washington. I had learned that Peugh had been disbarred as an attorney in the departments of Washington; that Rittenhouse was incapable, and I was satisfied that Winder was a mere creature in the hands of Porter, whatever his ability may have been.

Q. When, as you say, Porter repudiated your contract, did he not always claim that he should have been looked upon as principal and not subordinate to you; was not that the intent of his repudiation of said contracts?

A. No, sir; he never claimed anything of the kind until after he had stolen my papers and I had discovered his fraudulent transactions with Peugh and Rittenhouse, and his falsehoods in relation thereto.

Q. Did not Porter write a letter to Mr. Renick, in which he complains of your treatment to him, and that as he, Renick, had been the means through whom Porter employed you, he desired Renick to aid him in the matter; and did you or not subsequently get the letter from Renick, and, if so, have you said letter or was it among those you handed over to Mr. White?

A. Porter wrote several letters to Col. Renick which were full of false statements. I don't recollect any of the purport you have mentioned. Col. Renick's administrator, after his death, handed me several of Porter's letters to his intestate. I think I gave them to Mr. Pike, and they were probably, I am not certain, handed over to Mr. Stephen V. White. They were in Porter's handwriting. It may be, however, that Col. Renick's administrator only gave me copies.

Q. When, where, and under what circumstances did you first make the acquaintance of the defendant White?

A. It was in Washington city, about the middle of Feb., 1878. It was shortly after Pike, Johnson, and myself filed our briefs in the State Department. White came over and we negotiated for a sale.

Q. Did White know anything about the substitution of the 4th of July, 1870?

A. I don't know, Mr. Johnson.

233 Q. Did you and Porter have any other transaction pending at the time of these claims, involving either a lawsuit of or concerning some lands?

A. Judge Moody and I filed a bill in equity in the U. S. court in Kansas, claiming the title in Porter to 640 acres of land, or a preemption right, on which land is situate, the town of "Council Grove." Judge Moody drew the bill on facts, or supposed facts, furnished him by Porter, the bill was stricken out for scandal. Porter had a lawsuit in the city of Independence, Missouri, with a man named Peacock, I think, about the title to a house and grounds. He recovered judgment for possession and mesne profits amounting to several hundred dollars. To provide against accident or judgments against him he placed the title, I believe, to the property in me, and assigned me the judgment; I think I quit-claimed

him the property, and I think gave him a power of attorney to collect the judgment. I understand from Porter that there was a motion for a new trial, and an exception and an appeal, and the judgment was ultimately reversed. In further answer to this question I will state that my original contract with Porter comprehended not only the three cases which I prosecuted before the commission, but such other cases as I might get among claims of persons who had claims against Mexico. I corresponded with claimants and personally interviewed Gen'l Bartholow, at the request of Porter, who had charge of the La Abra Silver Mining Company.

Q. Did or not Porter, on the 17th February, 1870, send you $115?

A. He sent me $100 about that time to pay some borrowed money he got before he went to Washington.

Q. In January, 1870, did he or not give you $25 to pay for Clark's deposition?

A. I don't think he did. He may have given me $25—the balance of that borrowed money; I am not even sure that he did that.

Q. Did not Porter give you, for the purpose of taking Siler's deposition, $90 in money, a railroad ticket to take you to Memphis, and lend you $10 besides?

A. No, sir; he gave me $90. I bought the ticket myself, and he never loaned me $10 besides, either.

Q. How much did Siler's deposition cost you?

A. At this time I dont recollect the expense of going to Jacksonport, Arkansas.

Q. What was the expense of taking Clark's deposition?

A. My impression is that it cost about $60. I had to hire a buggy and take along a U. S. commissioner from the adjoining town. I had to take the deposition twice.

Q. Did not Porter, on or about the 20th of September, 1870, give you $150, $65 of which sum was for the purpose of paying for the printing?

A. No, sir.

234 Q. Did you pay for printing any of the briefs or arguments that were filed here?

A. No, sir; Pike and Johnson paid for some of them. I don't know how many they filed. They printed their own briefs.

Q. Who paid for the printing of the arguments prepared by Winder, and to which you and Messrs. Pike and Johnson attached your names?

A. I don't know.

Q. Look at the paper now shown you, and say in whose handwriting the body thereof and the signature are.

A. I suppose it is in Mr. Ellerbe's.

Q. Who is Mr. Ellerbe?

A. My partner—a young lawyer in St. Louis at the time the claims were pending.

(The paper referred to is here offered in evidence, filed, and marked Exhibit J. A. C. No. 9, and is objected to, because it is an *ex-parte* affidavit, and because the affiant therein named is living.)

J. A. C. No. 9.

Having, at the request of R. H. Musser, made an affidavit as to the matter in controversy between him and Dr. R. H. Porter, concerning the claiming of Parsons, Conrow, and Standish against the Mexican Government, and in that affidavit having made statements which, upon examination, I find to be incorrect, at the request of Dr. Porter, I desire to make the following corrections: Dr. Porter did not get the powers of attorney and contracts at the time and in the manner that I had stated, for, upon examination of the powers of attorney, I find that Dr. Porter was substituted in those powers by Col. Musser on July 4, 1870, at which time I was in Alabama, and as that substitution was made during my absence I do not know for what purpose it was made or the circumstances attending it. These powers of attorney and contracts were in my desk prior to the time of my going to Alabama and prior to the time of the substitution by Col. Musser to Dr. Porter, and I think I handed the papers to Dr. Porter before going away, and I think in the month of June, 1870, in giving these papers to Dr. Porter I did so because I thought he had an equal right to the possession of them with Col. Musser. Dr. Porter had always exercised an equal right of ownership over these papers with Colonel Musser. Dr. Porter was in the office every day when he was in the city, and frequently gave me instructions and directions concerning these Mexican claims, without ever knowing from any direct information, from either Dr. Porter or Col. Musser, what the terms of agreement were between Dr. Porter and Col. Musser; from the interest that Dr. Porter manifested in these claims, and from various other circumstances connected therewith, I inferred that Dr. Porter was equally interested in these claims; that Col. Musser was to prepare the claims and the proof here; that Dr. Porter was to furnish the money necessary to prepare the claims and take the proof and see to the presentation of the claims at Washington city, and that Dr. Porter was to receive one-half of Col. Musser's interest as specified in the original
235 contracts. I don't know what money Dr. Porter furnished in this matter, but I do recollect that Dr. Porter sent Col. Musser a draft from Washington city, in Feb'y, 1870; don't know the amount. I recollect hearing Dr. Porter saying to Col. Musser that he, Porter, would attend to the business in Washington city, and did not want Musser to interfere with it, and that he, Musser, must attend to business that came up here. I find on examination, that in the winter of 1869 and 1870, in Dec'r or January, Dr. Porter did go to Washington city for the purpose of raising money himself *or* on these claims, and I was under the impression that these assignments were made to him at that time and for that purpose, but being absent at the time of these assignments I do not know for what purpose they were made.

CHRISTOPHER P. ELLERBE.

Subscribed and sworn to before me, a notary public, for and within the County ———, appointed October 14, 1874, qualified October

16th, 1874, and commission expires October 14, 1878, this twenty-eighth day of June, 1875.

[SEAL.] CHARLES BLEMLER,
Notary Public for ——— *Co., Missouri.*

Q. Were you acquainted with Gen'l Shields, who testified in the case that was pending in St. Louis, Missouri?

A. No, sir.

Q. Give his full name, if you please, and state whether he is living or dead?

A. William Shields; he is dead.

(Here counsel for Porter calls for the production of all Porter's original letters the witness relating to this case, and announces that his cross-examination of Col. Musser, on behalf of Porter is closed.)

Cross-examination of Col. MUSSER, by Mr. JOHNSON, on behalf of defendant Peugh, who being present, requests the following questions:

Q. Produce your letter-press book please, containing the following letters, addressed by you to Charles E. Rittenhouse: Mar. 20, May 24, 28, 30, 1870; Jan'y 23, Feb'y 6th, Mar. 1st, 9th, 20th, and 28th, 1871.

A. My letter-press book is in Missouri; I presume Mr. Peugh, has the originals.

Adj'd to Jan'y 21, '80, at 11 o'clock a. m.

JAN'Y 21, '80.

Met pursuant to adjournment.

Present: Counsel for complaintant, and J. J. Johnson, Esq., for def't Porter. By consent, hearing further adjourned to Jan'y 22d, at 10.30 a. m.

JAN'Y 22D, '80.

Met pursuant to adjournment.

Present: Counsel for complainant, and J. J. Johnson, for def't Porter. Mr. Th. Jesup Miller declined to cross-examine Col. Musser on behalf of defendant McManus. The witness remaining until 11.30, and none of the defendants appearing, the hearing was further adjourned to Jan'y 23, '80, at 1.30 a. m.

The cross-examination of Col. Musser, on behalf of def't Porter, is here closed.

JAN'Y 23D, '80.

Met pursuant to adjournment.

236 Present: Counsel for def't Porter, Winder, and McManus, and Col. Musser, witness for cross-examination, and after waiting until 11 o'clock a. m., and nobody appearing for Rittenhouse, def't, the hearing was further adjourned to Jan'y 24, at 10.30 a. m.

JAN'Y 24, '80.

Met pursuant to adjournment.

Present: Counsel for complainant, C. Ingle, Esq., for def't Winder; J. J. Johnson, Esq., for def't Porter, and S. A. Peugh *in propria personæ*.

Cross-examination of Col. MUSSER, on behalf of defendant Peugh, by Mr. PEUGH:

Q. You have stated that you had correspondence with Messrs. Rittenhouse and Peugh in relation to the claims of Conrow, Parsons, and Standish. When did that correspondence commence?

A. I think early in 1870.

Q. Did you or not know that Rittenhouse and Peugh had an agreement with Dr. Porter for advances in the prosecution of these claims?

A. I didn't know it until late in the fall of 1870, when I got the information from them.

Q. How did you know that fact?

A. By writing to them and inquiring. They had written a letter addressed to me which I suppose they had intended for Dr. Porter, in which they mentioned having advanced $350. That led to inquiries on my part; I wrote to them, and they sent me their contracts with Porter; that was the first I had heard of it.

Q. When you wrote to Musser, Pike, and Johnson, as you have stated you did, in 1872, were you not in possession of a copy of a contract between Dr. Porter and Messrs. Rittenhouse and Samuel A. Peugh?

A. Yes, sir.

Q. Did you or not write to the State Department and ask to be informed if these cases, Conrow, Standish, and Parsons, were being attended to before the commission?

A. I don't recollect that I did. If you show me a letter to that effect it may refresh my memory about it.

Q. Do you think you did not so write?

A. I am inclined to think I did not. It has been about ten years ago.

Q. I believe, Col. Musser, you procured much of the testimony in these cases.

A. I think I procured it all—that which was of value.

Q. Did you procure that testimony under instructions from any one; if so, from whom?

A. I procured it under my contract, and by the instructions of my clients.

Q. Did you not procure some of that testimony under instructions from Charles E. Rittenhouse and Samuel A. Peugh?

237 A. No, sir. Neither Mr. Samuel A. Peugh nor Mr. Rittenhouse had any authority, nor were they competent to instruct me. In Clark's deposition mention was made of the fact that the three gentlemen murdered in Mexico had been Confederate officers. In Siler's deposition he represents Lieut. Col. Don Platon Sanchez as having shown him when he (Sanchez) was drunk a watch which

he (Sanchez) had said that he had taken from the Confederate general, meaning Parsons. Either Peugh, Rittenhouse, or Porter, or probably both of them, wrote to me, suggesting the propriety of having the depositions retaken, leaving out those obnoxious words of no materiality in the issue. Dr. Lieben was then the umpire of the commission, and it was supposed such statements might affect the allowance or quantum of damages. Out of abundant caution I took the depositions over in accordance with this suggestion.

Q. Were not those depositions sent to you in proper form by Rittenhouse and Peugh after having been subjected to their scrutiny?

A. As to the scrutiny part, I don't know, as I did not subject them. The depositions, I think, came to me, being *ex parte* affidavits, in the form in which I had sent them, emasculated of objectionable statements which I have mentioned. Outside of the emasculations, they were copies of the affidavits I had forwarded.

Q. To whom were they sent in the first and second instance after having been executed?

A. To Messrs. Rittenhouse and Peugh.

Q. Did Mr. Rittenhouse ever inform you that he had abandoned the prosecution of those cases?

A. Not that I know of. The only person authorized to prosecute them was myself. Mr. Rittenhouse could have done nothing towards the prosecution of those claims except to advance money, which he never did to me. He was no lawyer, and had neither the learning or ability required. He could, however, file papers, being merely ministerial or clerical.

All after the first clause of last answer is objected to by Mr. Peugh as irrelevant.

Q. You have stated, I think, Col. Musser, in your testimony that Messrs. Rittenhouse and Peugh had repudiated you; will you please state how they repudiated you.

A. They stopped all correspondence with me, informed me that they did not recognize anybody having any control of the claims except Mr. Porter, and when I enclosed them Porter's letter denying that he had sold them my interest, and stating that the $300, which they had advanced to him, Porter, was a personal and private loan, which statement, if true, convicted Rittenhouse and Peugh of falsehood in their letter, and called their attention to the fact that one or the other statement was a falsehood, and that they could judge which it was, I requested them to return me the original letter of Porter, containing that statement. Mr. Rittenhouse or firm of Rittenhouse and Peugh wrote to me without returning me Porter's letter, advising me that they had turned over my letter with its enclosures, I think, to Mr. Porter.

238 Q. I have asked the question as to how Messrs. Rittenhouse and Peugh repudiated you; was any such written repudiation sent to you?

A. I have here a copy of a letter which I know to be a copy; I make proffer of it, the original of which I think is with Stephen V. White; it is dated Feb'y 25, 1871, and contains this language: R. H.

Musser, Esq., attorney, St. Louis, Mo. D'r Sir: Your favor of the 22d inst. received, and as Dr. Porter is now here, I only know him in this business, and having confidence in his carrying out his agreement with Mr. P. and myself, I feel bound to show him my correspondence in reference to this case.

Mr. Peugh here objects to the letter as being only a copy.

Objection withdrawn and letter offered in evidence, which is filed and marked Exhibit S. A. P. No. 1.

EXHIBIT S. A. P., No. 1.

WASHINGTON, D. C., *Feb.* 25, 1871.

R. H. MUSSER, Esq., *Att'y, St. Louis, Mo.*

DEAR SIR: Your favor of 22d instant received, and as Dr. Porter is now here, and I only know him in this business, and having confidence in his carrying out his agreement with Mr. P. and myself, I feel bound to show him any correspondence in reference to the case. The Dr. feels much incensed at your letters to me, and has given me a history of the whole affair from its origin. I think it would be best for all parties interested to work harmoniously, and, if possible, by united effort to obtain a favorable result. If any dispute is justifiable at all, would it not be best to defer it until we have something to squabble about, and not be "counting out chickens before they are hatched?" If the Doctor's representations are correct, it was by his personal act that you became interested in these claims. I do not think there can exist any good cause to get up suspicion of bad faith in him; he has always recognized your interests and rights on their claims.

Yours, &c., C. E. RITTENHOUSE.

Witness resuming, says: Also, on the 2d March, 1871, Rittenhouse wrote to me a letter, of which I have a copy in my hand, and make proffer of it, the original of which is not in my possession, in which Mr. Rittenhouse writes as follows: "The doctor did not sell us our share for the $300, but interested us in the claims upon condition that we advance that sum to aid in getting up the necessary testimony and to attend to the prosecution of them before the commission, and all the business at this point."

Here Mr. Peugh offers the same in evidence, which is marked Exhibit S. A. P., No. 2.

EXHIBIT S. A. P., No. 2.

WASHINGTON, D. C., *March* 2, 1871.

R. H. MUSSER, Esq.

DEAR SIR: Yes; of 27 and 28 ulto. received, latter endorsing order on Doc. Porter for the papers named. I do not think from what the Dr. says that there is any cause for uneasiness or trouble between

you. It will be best to act harmoniously and not "count the
239 chickens before they are hatched;" nothing may ever be recovered, and a public dispute about the control of the claims cannot but damage the interests of the claimants and may cause total loss of all hope of recovery. The Dr. did not sell us our share for the $300, but interested us in the claims upon condition that we advanced that sum to aid in getting up the necessary testimony and to attend to the prosecution of them before the commission, and all the business at this point. I would suggest that the business should go on quietly, and when we have recovered any money for the heirs, I think it can be all settled amicably.

The Dr. has shown no disposition to embarrass our action and assures us of any and all aid from him to ensure success.

Truly, &c.,

C. E. RITTENHOUSE.

Witness resuming, says:

I have here a copy of my own letter, dated February 27, 1871, taken from my letter book, which is among those asked for by Mr. Peugh the other day, which letter enclosed the letter of Porter, alluded to in my former evidence, in which I say: Mr. Peugh may remember whether the $300 was furnished Dr. Porter for his private use and in purchase of one-fourth interest in claims or not. If such was the case, Dr. P. has no claim, having sold them to you. On the 28th February, 1871, I wrote to Mr. Rittenhouse, a copy of which letter, taken from my letter book, is here produce, from which I quote: "The $300 received of you and Mr. Peugh, he claims, was a private loan made by you to him; for—know yourself whether the loan was made upon the faith of his representations that he had the contracts mentioned, and in consideration that it was to be expended in procuring evidence in support of them." And again, in the concluding part of the letter, I say: "It looks very much to me as if if the $300 were procured from you under false pretences." Upon the whole, after a careful analysis of the contract, the copy of which you sent me, I can perceive nothing in it but fraud and bad faith towards all parties, to which he was impelled by his desperate necessities. These two copies are proffered in response to the call of Mr. Peugh by Mr. Johnson on me. Mr. Rittenhouse's letter, which I have formerly quoted from, of date March 2d, 1871, acknowledges the receipt of these letters of February 27th and 28th, with enclosure, and is in response thereto.

(Copy of letter dated 27 February, 1871, addressed to C. E. Rittenhouse, is here offered in evidence by Mr. Peugh, and marked Exhibit S. A. P., No. 3.)

EXHIBIT S. A. P., No. 3.

SAINT LOUIS, *February* 27, 1871.

C. E. RITTENHOUSE, *Washington, D. C.:*

I enclose you a letter from Dr. Porter. I have apprehended the unpleasant result, and am now glad it has culminated. I have his

drafts on me, which I have honored for more than sufficient
240 to pay him. Mr. Peugh may remember whether the $300 was furnished Dr. Porter for his private use and in purchase of one-fourth interest in claims or not. If such was the case, Dr. P. has no claims, having sold them to you. I desired to avoid the necessity of publishing a revocation of those powers, and warning the public against any use he may make of them. I have instructed him to hand them over to you.

I desire to hear from you further; and that you may not suspect me of being an adventurer, I can give you sufficient references. Gen'l Blair, Mr. Fonkilbery, and Mr. Wells, who are in Congress, know me; and I am not an adventurer, living upon the credulity of honest men.

Your obedient servant,

R. H. MUSSER.

Witness resuming, says:

On the 9th day of March, '71, I addressed to Mr. Rittenhouse a letter, which I proffer here in response to Mr. Peugh's demand, made through Mr. Johnson the other day, in which I say: "Please return me the letter enclosed to you in my letter of February 27th. This letter is tendered as being a perfect a copy as the letter book can furnish.

Here Mr. Peugh offers in evidence letters dated March 9th, 1871, and marked Exhibit S. A. P., No. 4; February 18, 1871, marked Exhibit S. A. P., No. 5; February 22, '71, marked Exhibit S. A. P. No. 6; February 28, '71, marked Exhibit S. A. P., No. 7; March' 20th, '71, marked Exhibit S. A. P., No. 8.

EXHIBIT S. A. P., No. 4.

ST. LOUIS, MO., *May* 9, 1871.

C. E. RITTENHOUSE,
Washington, D. C.

DEAR SIR: Please inform me if Dr. Porter has handed the papers, contracts, and powers of attorney from the heirs of A. H. Conrow, A. M. Standish, and M. M. Parsons, in the claims against Mexico, in accordance with my instruction.

Please return me the letter enclosed you in my letter of February 27th. It has become important for me to procure for some proceedings here.

I remain your obedient,

R. H. MUSSER.

EXHIBIT S. A. P., No. 5.

SAINT LOUIS, *Feb'y* 18, 1871.

C. E. RITTENHOUSE, Esq.,
Washington, D. C.

DEAR SIR: I am in receipt of yours of Feb'y 15, with inclosure. The contract is entirely satisfactory in so far as you and Mr. Peugh

are concerned. I must express my entire satisfaction with the promptness and frankness with which you answered my enquiries, and I will endeavor to be equally frank and honest with you.

I made the bargain with the parties, and the contract is entirely with me. Dr. Porter is not known in the contracts with the parties, as he was then unknown to them. The papers were not at
241 that time executed, and the contracts are insufficiently described in your contract with him; but it is substantially correct. Mrs. Standish is widow and adm'x of the deceased, and guardian for her children. There is an administrator of A. H. Conrow; she is guardian of her children. Jackson L. Smith, a very — and scrupulous and honorable lawyer, is curator for young Parsons. Dr. Porter had never been substituted in my powers of attorney at the date of his agreement, for some of them had not then been signed. You will see from the papers that Stout, administrator of Conrow, was made a party claimant on the suggestion of Mr. J. Hubley Ashton, after Mr. Cushing had noted his objection to the memorial. I substituted P. for me as attorney-in-fact last summer for a specific purpose, and he has failed to hand me back the papers. He has, I think, the contracts handed him at the same time, but the claimants have them in duplicate, and I have no concern for their loss. His embarrassments have been such that I suppose he used most of the money furnished him for his severe necessities. There is a printer's fee of sixty dollars here, about which I am greatly annoyed: as also a bill for taking depositions in Howard county. Thirty dollars due the United States commissioner who took Clark's deposition a second time. My own expenses in procuring the testimony have been heavy, which, with the exception of ninety dollars for my expenses to procure Siler's deposition furnished me, have not been paid. Powers of attorney executed by executors and guardians do not bind the heirs and wards. They are *prima facie* however, but if we should be so fortunate as to get our claims allowed, the safest way to avoid trouble will be to have in each case an order of the probate court, and the signatures of all parties signed to the contract. I made these suggestions for your safety as well as mine, when the time of settlement may come. There is in both the contracts and powers of attorney, a very large discretion given to me, but I am the responsible party and must discharge my trust. I have no hesitation in affirming the contract.

Your ob't serv't, R. H. MUSSER.

EXHIBIT S. A. P. No. 6.

ST. LOUIS, *Feb'y* 22, 1871.

C. E. RITTENHOUSE, *Washington, D. C.*

DEAR SIR: A friend of mine who is interested in some claims before the Mexican Joint Commission, informs me there is a rule requiring the powers of attorney to be filed with the papers in every case where the memorial is sworn to by an attorney, and not the applicant himself. Dr. Porter informed me on Sunday he was going

to Washington on that day. I wish you would demand the powers of attorney which he says he has, for the purpose of filing them.

Your ob't serv't, R. H. MUSSER.

242 EXHIBIT S. A. P. No. 7.

ST LOUIS, *Feb'y* 23, 1871.

C. E. RITTENHOUSE, *Washington, D. C.*

DEAR SIR: Since my letter of yesterday enclosing a note from Dr. Porter to me, I have seriously meditated on the condition of the Mexican claims. I have known Dr. Porter since I was a boy; and I regret very much the necessity of only which has compelled me to communicate my former letters. I wish to hear from you and Mr. Peugh; I can easily satisfy all of his claims for all expenses on behalf ot Mexican papers; he is in no position to damage them; it is evident he misrepresented the whole thing to you; he never had any contracts with the claimants, for the simple reason that the claimants would never have contracted with him.

I agreed, and intended in good faith, to share with him the proceeds of the claims, but he agreed to furnish the funds necessary for expenses. The three hundred dollars received of you and Mr. Peugh, he claims private loan made by you to him; you know yourselves whether the loan was made upon the faith of his representations that he had the contracts mentioned, and in consideration that it was to be expended in procuring evidence in support of them. Dr. Porter owes me more money than he has expended—for actual loans, besides a fee to Judge Moody and myself for bringing a suit in the U. S. cir. court of Kansas, and for professional services, taking depositions in those cases, as I wrote you before. I do not care to disturb the arrangements made by you in your faith with him, so I will enter into a contract with you that will bind me as the attorney-in-fact of the claimants and bind them. I will send a written order on him to surrender the powers he has the control of, which I did not know he had until recently; if he refuses to surrender them I shall be driven to the unpleasant necessity of making publication in the St. Louis and Washington city newspapers, revoking the powers and charging him with the fraudulent manner in which they were obtained, as he admits they were given him for a specific purpose which he did not accomplish.

I am desirous of sparing him in every possible way, and if I was alone in the matter might take no steps whatever; but as I represent the claimants, who are widows and orphans, I must take steps to protect them.

It looks very much to me as if the $300 were procured from you under false pretenses. Upon the whole, after a fair and careful analysis of the contract, a copy of which you sent me, I can perceive in it nothing but fraud and bad faith towards all parties, to which he was compelled by his desperate necessities.

Let me hear from you.

Your ob't serv't, R. H. MUSSER.

243 EXHIBIT S. A. P. No. 8.

Letter-Book E, Page 671.

R. H. MUSSER, Attorney-at-Law.

SAINT LOUIS, MO., *Mar. 20th*, 1871.

C. E. RITTENHOUSE, *Washington. D. C.*

DEAR SIR: Your favor of 16th is at hand. You do not say anything about Dr. Porter.

* * * * * * *

I suppose Dr. P. will be in Saint Louis in a few days, and I will endeavor to get the papers out of his hands, one way or another.

I had hoped they were in your possession. I am not satisfied for them to remain in his after the manner in which * * *

* * * * * * *

Yours, &c., R. H. MUSSER.

* * Three or 4 words in each line marked are illigible.

Q. Did you write to the commission or the State Department and ask to be informed whether these cases which you had transmitted to Rittenhouse and Peugh had been neglected in their prosecution?

A. I have no recollection of any correspondence to the State Dep't or commission about it.

Q. On page 32 of your examination the other day the following question occurs: "Was it not your purpose and object in advising the parties to revoke their former letters of attorney and to execute one to Messrs. Pike & Johnson, to get rid of Porter entirely?" I wish this much of the answer to be taken down: "I had confidence to protect my interest, as well as the interest of my clients, against such creatures, Rittenhouse, Peugh, and others, which Porter had intervened in the cases here in Washington," I wish to be stricken out as scandalous, and to ask what such matter has to do with the merits of this controversy?

A. This is the first time, being a witness, during this examination that I have had occasion to exercise the functions of an equity judge and pass upon the questions of scandal in the deposition. My answer I endeavor to make responsive to the question asked me by Mr. Porter's counsel, and, being sworn to tell the whole truth, I endeavor to state the facts according to my best knowledge and information. I had been informed that Mr. Peugh was disbarred in the departments. I didn't and don't know, of my own knowledge, whether it was true or not. The information was sufficient, as stated, to deprive Mr. Peugh of my confidence, under the circumstances, and, as an honest and vigilant attorney, consulting the interest of my clients as well as myself, I desired to have, for my counsel and theirs, men whom I knew to be of ability and reputation in their profession. My correspondence with Mr. Rittenhouse, of the firm of Rittenhouse & Peugh, had left the impression on my mind that they were the creatures of Mr. Porter, and entirely under his influence and control. I had my duty to perform to my clients as well as to myself. Subse-

244 quent conversations both with Rittenhouse and Peugh, and on their own acknowledgments to me, have convinced me at that time that they were entirely under his influence, and at the dictation of Porter.

So much of the answer as not responsive to the question is objected to, and here Mr. Peugh closes the cross-examination.

Q. Have you knowledge, information, or belief as to the present whereabouts of the agreement as to fees that were executed and delivered to you in 1869 by the claimants, widows, and heirs at law of the deceased Parsons, Conrow, and Standish, heretofore spoken of by you?

A. I have no positive knowledge, but my impression is they are in the hands of Dr. Porter. I heard him testify under oath that he had gone into my office and taken them out.

Q. Did you or not at any time by endorsement in writing on said agreements as to fees or otherwise, assign, convey, or in anywise transfer said portion of your interest thereunder to Dr. Rich. H. Porter or any other person whomsoever?

A. I did not; I made some endorsements on the powers of attorney; I don't think I did on the contracts, for the specific purpose of allowing Porter to bring them East to the Eastern cities, that he might raise funds; he failed to raise under his contract with me. They were entrusted to him for that purpose and none other; that endorsement was made on the 4th of July, 1870, and if Porter had negotiated or made any sale or contract under them between that time and about the 1st of September such would have bound and concluded me. It was about the latter date when Porter returned to St. Louis without being able to effect anything under them, and delivered them up to my clerk, Mr. Ellerbe. I neglected to have the endorsements erased. He applied to me afterwards to allow him to take them and put them in a safe, which I refused. Some time afterwards, on inquiring for them, I learned that he had them. I heard him testify that he had gone into my office and taken them out, without my knowledge and consent.

Q. Did you ever or not make formal demand on Dr. Porter for the return of the papers so taken from your office by Dr. Porter; if yea, with what result?

(Objected to, because in reply to nothing brought out on cross-examination; and secondly, if testimony at all, should have been given in chief.)

A. I made a formal demand of him in a letter. The result was I never could get them. In a letter to Dr. Porter, dated April 20, 1871, addressed to Dr. Porter, I say: "I give you further notice that contracts with certain parties in regard to claims proved against the Government of Mexico must be surrendered to me, as also the powers of attorney." That letter was mailed to Dr Porter on the day it was written, and I suppose that he got it, for he acknowledged the receipt of it in a letter, which was one of the letters handed to Mr. White.

(Answer objected to as inadmissible.)

245 Q. In your cross-examination you have spoken of a suit instituted by Dr. Porter against yourself and Mrs. Standish in the St. Louis (Missouri) circuit court; please state now what was the subject-matter of that suit, and how it resulted.

A. It was a suit based upon contracts, with powers of attorney, made with Mrs. Mildred Standish, dated early in March, 1874, or April.

The object of the suit was to enjoin Mrs. Standish from assigning to me the one-half or any part of her award against the Mexican Republic, and if she had so assigned to enjoin me from using the assignment, and to decree a specific performance on the part of Mrs. Standish of of the contracts by the assignment of one-half of the award to him—Porter. The bill was dismissed by the court, and the judgment of the court for costs was made final against Porter. There was no appeal or writ of error sued out. The preliminary injunction was dissolved.

Q. Have you any interest in the subject-matter of this litigation?

A. None whatever. All the interest I had in the case I sold to Stephen V. White.

By Mr. JOHNSON:

Q. In your endorsement upon the powers of att'y — Dr. Porter, as you have alleged, did you state the purpose and object?

A. No, sir.

By the EXAMINER:

Q. Do you know, or can you set forth, any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination, or the matter in question in this cause; if yea, set forth the same fully and at large in your answer.

A. I don't know of anything in my answer to Mr. Johnson's question on my cross-examination the other day as to the supposed scandalous matter objected to by Mr. Peugh. I want to amend my answer so as not by the epithet, "creatures," in any offensive sense to apply to Mr. Peugh or Mr. Rittenhouse, but only in the sense explained in my answer to Mr. Peugh's question, as being the creatures, and wholly under the influence of Porter.

R. H. MUSSER.

Sworn to and subscribed before me, this 24th day of January, A. D. 1880.

JNO. A. CLARKE, *Examiner.*

Adjourned to Wednesday, Jan'y 28th, '80, at 11 o'clock, a. m.

JAN'Y 28*th*, '80.

Met pursuant to adjournment.

Present: Messrs. Johnson and Ingle and counsel for complain-

ant. And the hearing was further adjourned to Feb'y 7th, '80, at 11 a. m.

FEB'Y 7TH, '80.

Met pursuant to adjournment.

Present: Counsel for complainant, and Messrs. Johnson and Ingle, for def't- Porter and Winder. Whereupon the hearing was further adjourned to Feb'y 14th, '80, at 11 a. m.

246 FEB'Y 14*th*, '80.

Met pursuant to adjournment. Present: Counsel for complainant and Messrs. Johnson and Ingle.

Whereupon complainant's solicitor announced his testimony in chief closed.

Accompanying these depositions are 18 exhibits, marked, respectively, "J. A. C.," Nos. 1 to 9, inclusive, and "S. A. P.," Nos. 1 to 8, inclusive, and Exhibit R. H. M., No. 2.

JNO. A. CLARKE.

In the Supreme Court of the District of Columbia.

JOHN CHILES
vs.
RICH'D H. PORTER *et al.* } No. 6703. Eq. Doc. 19.

At an examination held before me, an examiner in chancery, commencing on the 20th day of February, 1880, and ending on the 9th day of March, same year, the within-named witness, the defendant, was examined on behalf of himself, and the within deposition of said witness was written down by me from the statements made, on oath, by the witness, read to him, and by him signed in my presence.

JNO. A. CLARKE, *Examiner.*

Accompanying this deposition are nine exhibits, marked respectively R. H. P., Nos. 1 to 9, both inclusive, filed separately.

JNO. A. CLARK.

In the Supreme Court of the District of Columbia.

CHILES
vs.
PORTER. } No. 6703. Eq. Doc. 19.

FEB'Y 20, '80.

Met pursuant to notice given by defendant Porter.

Present: Mr. Johnson for Porter, Mr. Ingle for Winder, and Mr. Pike for complainant.

Whereupon the hearing was adjourned to Feb'y 24th, '80, at 11 o'clock a. m.

FEB'Y 24, '80.

Met pursuant to adjournment.

Present: Counsel for the complainant, Mr. Johnson for defendant

Porter, and Mr. DeWees for defendant Rittenhouse, Mr. Ingle for defendant Winder, and defendant Peugh *in propria personæ*.

Whereupon RICHARD H. PORTER, a witness of lawful age, produced on behalf of defendant Porter, being sworn, says:

Examined by Mr. JOHNSON:

My residence is at Louisville, Kentucky. I have known Mr. John Chiles since the war, but how long since, several years, I can't say. I made his acquaintance, I think, in this city about 1869—in the spring of 1869, in this city, at Plant's building. I was rooming there; also was Mr. Chiles. The subject of the treaty between this Government and Mexico was spoken of, and the act for prosecuting claims was then pending before the House. Mr. Chiles mentioned to me one day that if it became a law he knew of some
247 good claims to prosecute before that commission. I said to him—tell me about them and get them and let us prosecute them together. At that time he declined to say or tell me any more about it. A few days after that this same subject was spoken of and I made to him pretty much the same remark, let us get them and prosecute them. He said, No; that he and Judge Gist were interested in matters and if there were any prosecution that he and Gist would prosecute them. He then told me names—Gen'l Parsons, Col. Standish, and Col. Conrow. I remarked to him, that I knew all about it, that I had read the particulars of their death soon after it had occurred in 1865. A few days, I don't know how long after, something was said about the claims again between him and myself, and he told me that Col. Gist or Judge Gist had gone to Missouri to get them. Some two or three months after that, along in the fall, I think, I met with Judge Gist, on F street, and after the ordinary salutations, I asked him if he had gotten those cases, mentioning them to him, Standish, Parsons, and Conrow. He said, No, that he had not; that he hadn't gone after them; that he had been to Texas. I said to him, with some surprise, You surprise me. Chiles told me you had gone to get those cases.

Q. Did you at any time make a contract or have an oral agreement with Chiles or Gist, or both of them, concerning these claims in which you were to divide equally the fees between Chiles and Gist, or either of them, and did you go to Missouri under any instructions from Chiles or Gist, or both of them with instructions from them or either of them as to how you should proceed and obtain said claims?

A. I never had a contract with either one of them, either written, orally, verbally or in any way whatever. At the time I talked with these gentlemen, I had no mind whether I would or could get them—no fixed attention that I would get them. When Mr. Chiles told me that Gist had gone for the claims, I took it as a matter of fact that he had, and thought nothing more about it, and when I was talking to Mr. Gist it was an ordinary conversation between gentlemen, he spoke generally about the prosecution of claims and the mode of proceedings, etc.; but I had no contract or understanding whatever with him about these claims.

Q. From the time of filing the respective claims in controversy before the commission, up to the time of Mr. Chiles filing his bill in this cause, has he ever made or any one for him, demand for settlement or presented any claim for any interest assumed by him to have in these cases?

A. None whatever.

Q. Are you acquainted with R. H. Musser? If so, state how long you have known him.

A. I am, and have known him ever since we were small boys, having been born in the same village.

Q. Where is his residence now, if you know?

A. I understand it is in Charriton county, Missouri.

248 Q. State what, if anything, you had to do with said Musser in connection with the claims in controversey? State fully and in detail.

A. In the fall of 1869, or winter, in St. Louis, I had conversations with General Shields and Colonel Robert Rennick; told them that I had made up my mind to prosecute those three claims if I could get them, and that I had no doubt of it at all, and proposed to Rennick to go into partnership with me and to furnish the money, and that I would do the work or have it done. He declined—that he had no money. I then asked him and Shields to tell me of some young man who had studied law just long enough to understand the taking of depositions, powers of attorney, &c. They remarked to me that Colonel Musser was an ex-Confederate and very poor, and would be a good man for that purpose. I remarked that he was too old a lawyer and that I would have to pay him too much money for the services that I wanted done. They remarked that I need*ed* mind that, that he was so poor and needed business so badly, that he could afford to do it as cheap as any one, and urged me to employ him. I called upon him and told him what I wanted, and what these gentlemen had said. I showed him blank powers of attorney and contracts that I wanted him to get for me from those persons, and that I would want him to take depositions, such as would be in striking distance, such as would be convenient for him to take, such as St. Louis. I had in the powers of attorney, irrevocable, coupled with an interest, with a power of substitution, and explained to him that I wanted that embraced in the powers particularly, because I would have to employ or substitute some one in the city of Washington, remarking to him at the time that I would pay him a liberal fee for his services, and that in the end, that if I obtained a large judgment, that I would pay him somewhat in proportion, to which he consented, taking the powers of attorney and contract, and said that he would attend to it. I then went on to Independence and Kansas Cities where I had business, and saw no more of Colonel Musser for a month or two. I returned to St. Louis some time early in January, 1870. He told me he had gotten those powers of attorney and contracts from all excepting Mrs. Conrow I think. On looking at the papers, I saw that he had put R. H. Musser where the name of R. H. Porter had been. I complained and said that was not according to our contract arrangement, which he replied that he meant nothing by it, that he thought

as the parties knew him, he being present, that they would more readily sign the contracts and give the powers of attorney. I, however, was very much dissatisfied and expressed myself so; he said that I ought to know that the power of substitution would give me the same powers that he himself had, and would be just the same thing to me. Having confidence in him, I concluded to go on and prosecute the case as I intended to do. I then determined, having business in Washington city here, expecting to collect some money here, to make arrangements while here to prosecute the claims. Upon
249 arriving here and remaining here for a few days, I made an arrangement with Rittenhouse and Peugh to prosecute those claims. February 16th or 17th, 1870, I sent Mr. Musser $125. Some time in the early part of April or May, 1870, I returned to St. Louis. I wanted the deposition of Mr. Siler, who lived in Arkansas. Mr. Musser agreed to go and take that deposition. I went to the depot with him. On the way from his office to the ticket office, he remarked that he would like to have a thin coat. I gave him $10 to buy it. I bought his ticket to Memphis, which cost in the neighborhood of $15 or $20. I went then with him to the cars, and I there gave him $90, which he took, and went on and got the deposition. Some time in May or June, 1870, I was in his office, and those powers of attorney and contracts were lying around loose on his desk. Mr. Ellerbee, his partner, was in the office. I said to him: Is this the way you take care of papers? He said, Yes; Mr. Musser is very careless. I gathered them together and said to him: I will take those papers to my room and take care of them if this is the way you gentlemen do it, which I did.

The 4th day of July, 1870, I had made arrangements to come on to New York and Washington city. On that day I went to Mr. Musser's office and handed him each one of those powers of attorney to substitute me upon them, which he did, and I brought them away with me. On the 5th day of July I started and went to New York.

Q. State, if you please, if you furnished Mr. Musser with any further sum or sums of money for the purpose of proving up these claims.

A. In September, '70, I gave Mr. Musser $65 to pay for the printing of the three memorials. I let him have $135 or $140 in the same time. From January, '70, independent of these amounts, I had let him have, up to this time, sundry amounts, from $2 to $4, on divers occasions.

Q. Did all of Musser's letters to you and your letters to him, concerning money matters, relate to the claims in controversy?

A. No letter of Musser's or mine, after I returned here in April, 1870, had anything to do with raising money to prosecute those claims.

Q. When did you first learn that Musser was seeking, or had prevailed upon the claimants to revoke all powers of attorney and contracts, and to make and execute a power of attorney and contract with Messrs. Pike and Johnson?

A. The first I heard of it must have been in May or June, 1872.

Q. Can you tell from memory what depositions have been taken before the power of attorney to Messrs. Pike and Johnson?

A. All the depositions had been taken and filed that I knew anything about, or upon which I suppose the cases turned—Gen'l John B. Clarke's, Captain Siler's, and Jackson L. Smith's, and Cuesenberry, and others.

Q. Did you have anything to do with either preparing or transmitting the memorials in the respective cases to Musser; if so, state what you and Musser, or either of you, did in relation thereto.

250 A. Mr. Musser prepared the memorials in those three cases, and they were sent here. They were so imperfect, having so much in them that would injure the cases, they were corrected and sent back to him. I might remark here that it was the same case with the depositions of Gen'l Jno. B. Clarke and Capt. Siler—their depositions had to be sent back for correction. Now, I came to Washington city during the pendency of those memorials, and had conversations with parties to know what was the difficulty. Informed myself as much as I could of the manner and what ought to be said in them. Returned to St. Louis again. That the memorials were sent backwards and forwards at least three times for correction before they could be filed here. I sent two of them here myself for filing, and the other was sent by myself or Mr. Ellerbie.

Q. Did you have an interview with Musser or write to him when you learned that he was trying to sell you out?

(Objected to, as leading and as assuming what has not been testified to, to wit, "Musser attempted to sell witness out.")

A. In a letter written to Mr. Rittenhouse in the latter part of the fall or winter of 1870 or 1871, he claimed to be a partner of mine; and he, inquiring as to a contract I had made with Rittenhouse, I wrote a letter to Robert Rennick, telling him of the advantage that he, Musser, was attempting to take—claiming to be a partner—drawing Mr. Rennick's attention to the fact that he knew that he was only employed by me, and that I would have nothing more to do with him. That I would be in St. Louis in a short time, and would be ready to settle with him, Musser, and asked him to show that letter to Musser, and telling Mr. Rennick that I would hold him responsible for having recommended Mr. Musser to me. I did go to St. Louis, and am now satisfied that it was some time in December, 1870. I saw Col. Rennick, and he told me that he had shown the letter to Musser. I passed on through to Independence, Mo., and did not see Musser. I received a letter some time that winter from Musser. I answered it, and told him I would be in St. Louis in a short time, and would and must settle with him. I went to St. Louis June, 1871, and, through Col. Rennick, proposed a settlement. Had a paper drawn up to leave it to arbitrators. I had the paper submitted to him, Musser. He made some amendments, and chose Col. Armstrong as his arbitrator. I had my attorney to write out the paper making the result of the arbitration binding and final. I had it returned to Musser to sign. He kept the paper, and would not return or sign it. I then notified him that I would have noth-

ing more to do with him. This was in June, 1871. I returned here in the fall of '71; received notice from the commission that the claims of Parson, Standish, and Conrow must be closed up. I wrote to the parties—Mrs. Standish, Conrow, and Parsons—all the facts in relation to my transactions with Musser about these claims, sending him to get the powers of attorney for me, and that I, in fact, was and had prosecuted the claims, and unless they would protect me against this man Musser by giving me other powers of at-
251 torney and contracts that I would not continue to prosecute their claims. They wrote to me that it was something new to them; that Musser had not told them of these things, and that they would protect me either by giving me other powers of attorney and contracts. Mr. Quesenberry, the father of Mrs. Conrow, argued that if I had an original power of attorney, with power of substitution irrevocable, that it ought to be sufficient to protect me if Mr. Musser had substituted me; but if I would return those, that they would give me others.

Q. Mr. Musser, in his deposition, says that at one time he loaned you $45 in money. You said that was not enough. He then gave you a check for $65.00 addition. That you gave him a draft on New York for $110. What have you to say to that?

A. On the 4th day of July, 1870, he let me have $35, which is all the money I recollect getting from Mr. Musser. If I did give him a draft on New York for the $110, I paid it.

Q. Mr. Musser, in his deposition, further says that you returned the powers of attorney with the endorsements of substitution. That a short time subsequently you asked him to let you have the papers to put in Rennick's safe. That he refused, and told you that he would keep them himself. He further says, a few weeks afterwards, that he learned from Ellerbie that you came there and got them by representing that you had his, Musser's, permission for it. What have you to say in respect thereto?

A. In the first place I took them, as I have already stated, in the presence of Mr. Ellerbie, making the remarks that I did. He substituted me the 4th day of July, 1870. I was not in St. Louis any more until Sept. '70. I was not in Mr. Musser's office more than once or twice after that time. The papers were never out of my possession. I saw this letter he had written to Mr. Rittenhouse claiming to be a partner. He came to me and asked me one day if I had the papers. I told him that I had. He remarked, hadn't I better leave them with him, that I might loose them traveling about. I told him that I didn't think there was the slightest danger, that I could take care of them quite as well as he could. A week or ten days after this he had something again to say about the papers, that I might loose them, and that I had better leave them with him. I asked him what he wanted with those papers, that they were mine, and said that I was capable of taking care of them. He remarked merely to take care of them, that I was going about and I might loose them. I learned from Judge Moody that he, Musser, threatened to sue me for the papers, and I remarked to Judge Moody that I would be very glad if he did so—that I would show him how he could put

his name in a power of attorney instead of my own. That I could then show this and have him dismissed as a lawyer, and afterwards have him prosecuted for it. I remained in St. Louis two or three weeks longer than I would have done, hoping that Musser would sue me as threatened.

252 Q. Musser in his deposition further testifies: "I will say in that connection that Porter had behaved so dishonorably with me, that he had entirely failed to furnish any funds and was endeavoring to defraud and supplant me, and had given my clients persistently such annoyance and was so entirely untrustworthy and dishonest, and having stolen the papers executed to me by my clients, and that they were in such a state of apprehenson by reason of his importunities and threats, I felt it due to them for their own safety and peace to interpose Pike and Johnson, disinterested and honorable attorneys-in-fact of the claimants, and not involve them in any quarrel with Mr. Porter than I could help." What have you to say, if anything, in reply thereto?

A. I think before we get through the dishonorableness and stealing will be on the other side. Every statement he has made is a lie from beginning to end, excepting that he wrote to get the powers of attorneys for Pike and Johnson, which I suppose he did, and that was done by misrepresentation and falsehood. March or April, 1872, Mr. Musser wrote to Pike and Johnson that I had obtained powers of attorneys surreptitiously from his office, and Mr. Ellerbie, and that there was no substitution, if there were it was a forgery. I was absent from the city when that was told to Messrs. Rittenhouse and Peugh and Winder. When I returned to the city, I think in April or May, 1872, those gentlemen met me and told me what had been said, and it was agreed that I should see Messrs. Pike and Johnson with them, and if I would show the power of attorney with the substitution made by Musser that they would have nothing to do with him or the claims. I called upon those gentlemen at their office in company with those gentlemen, Rittenhouse and Peugh and Winder. I showed the powers of attorney; they recognized the handwriting of Mr. Musser in the substitution distinctly. Mr. Johnson exclaimed, My God! ain't it strange that a man will write such a lie in the face of such facts, and said that he would write to him, Musser, and tell him that he would have nothing to do with him, Musser; that he was a damned liar and rascal, and that he would have nothing to do with him or his claims.

Adjourned to February 27, '80, at 11 o'clock a. m.

FEBRUARY 27, '80.

Met pursuant to adjournment.

Present: Counsel for complainant, and Mr. McManus, *in propria personæ*, and Jno. J. Johnson, Esq., for defendant Porter.

Whereupon the hearing was adjourned to Wednesday, March 3, '80, at 11 a. m.

MARCH 3, '80.

Met pursuant to adjournment, and by consent of counsel the hearing was further adjourned to March 8, '80, at 11 o'clock a. m.

MARCH 8, '80.

Met pursuant to adjournment.

Present: Mr. Johnson for defendant Porter, Mr. L. H. Pike for complainant; Mr. Peugh in proper person, and C. Ingle, Esq., for defendant Winder.

Whereupon the examination-in-chief of Dr. PORTER was resumed:

253 Q. At the time of your interview with Pike and Johnson, and in the presence of Peugh and Winder, when the power of substitution was exhibited, had Pike and Johnson received a power of attorney and contract from any of the claimants?

A. I am satisfied that they had not. They said positively that they would write to Musser; that he had deceived them by his false representations, and that they would not have anything to do with such a damned rascal as he (Musser) was. Some two or three months after this I met Col. Johnson on Pennsylvania avenue, in this city, and he told me that he had just a short time before received a power of attorney from Mrs. Conrow, sent to him by Musser. I am satisfied up to that time that was the only power of attorney he had from any one of these claimants. I said to Mr. Johnson that it was very strange that Mrs. Conrow should have given him any power of attorney; that I had received a letter from Mr. Quiesenberry, the father of Mrs. Conrow, that he would not give a power of attorney to any one else but me, and begged me to continue in the prosecution of the claims. I further told Mr. Johnson that I would not recognize his right as an attorney in the cases; that I had furnished all the money to take the depositions and to prosecute the claim; in fact, that he or no one else as attorney could be of any benefit in these claims, but that I had been to large expense in the prosecution of these claims, and if I needed any partner it should have to be a man to pay me back what expenses I had been put to.

Q. At the time of your interview with Pike & Johnson, in the presence of Winder, Peugh, and Rittenhouse, did you make known to Messrs. Pike & Johnson what your interests were in these claims?

A. I did. I told them all about it; that I had simply employed Mr. Musser as attorney; that my interest was one-half.

Q. State if after that conversation above with Pike & Johnson you received a power of attorney from one or more of the claimants; if so, state fully all about it.

A. I did. I wrote to Messrs. Standish & Parsons that they had promised to give me power of attorney, and that they had not done so yet, and, as they knew or ought to be satisfied by this time that I had prosecuted their cases up to date, that I wished them now to do so, and sent them powers of attorney and contracts to sign March, 1874. S. Kearney Parsons, having become of age, came on here with the power that I had sent his aunt signed. He had in company

with him a young man named Winston, a clerk in the clerk's office under young Parsons' grandfather. They were here some twenty-four hours before I knew it. I met them at the Ebbitt House one morning, next day after they got here. Young Parsons said he wanted to see me. I made an arrangement to meet him at Col. Nugent's office, on F street, between 12th and 13th streets N. W. He then told me that he was ready to give me a power of attorney and entered into a contract with me, and I had one drawn up,
254 which he properly executed and delivered to me. He also delivered to me a power of attorney and contract signed by his aunt, Mrs. Standish. The power of attorney in its execution was defective. I had it corrected, and had him to send it to his aunt to be signed and properly executed, which she did and returned it to me.

The originals are now on file in the State Department.

The original power of substitution that I got from Mr. Musser I gave to Mr. White.

The terms of the contract from Mrs. Standish & Mr. Parsons to me were that I was to prosecute the claims and furnish all the money, and to receive one-half of all the net proceeds.

Q. In your interview with Pike and Johnson aforesaid, what, if anything, was said by Johnson in regard to his, Johnson's, taking care of your interest in these claims?

A. Mr. Johnson tried to make the impression upon my mind that in this matter he would be my friend, and take care of my interest. I said to Mr. Johnson that he need not mind that; I would take care of my own interest; that I didn't consider that he had any rights in the case, and that I would not accord him any.

Q. While you were in St. Louis, where did you live, and where did Musser live?

A. I lived at the Southern Hotel. Mr. Musser lived in spots—in no particular place. His friends, Col. Rennick and Gen'l Shields, in recommending him to me for employment, said that he was so poor that he didn't get a square meal once a week, except when he came to their house on Sundays, which he did almost every Sunday. Mr. Musser, as every one who knew him, knew that he was without money, and had no credit. I learned after this difficulty between him and me that he had no standing as a lawyer, and that he was so well known as a liar that it amounted almost as a disease to him; that he was very little better than a pauper; he hardly ever paid a bill at a hotel, boarding-houses, or steamboat travel; that in my first acquaintance in this matter with him I was mortified by my attention being called to his exceeding bad dress, to remove somewhat I gave him a new hat, and requested him to fix himself up decently.

Q. What else was Musser engaged in, in connection with these cases, besides taking the depositions or affidavits in these cases?

A. Nothing, except to write lies to people concerning me.

Q. I show you a letter written by Musser to you August 29, '79. Has the contents of that letter any reference to the cases in controversy, or either of them?

A. Not a thing. This relates to a suit for a tract of land in Kansas.

(The same is here offered in evidence and filed, marked Exh. R. H. P. No. 1.)

Q. Then any letters that [were] written by Musser to you
255 after that date, touching money matters, what had it to do with these cases?

A. Well, I have no recollection of any letters passing between us after that date until 4th July, '70. Now all letters and any letters which Mr. Musser wrote me or I wrote him, after the 4th day of July, '70, had no reference to these cases. It was about another matter entirely.

Q. I show you a letter purporting to be written by Musser to Rittenhouse dated Feb. 6, '71.

Say in whose handwriting it is?

A. It is in Mr. Musser's. I desire to state here that he did state that he had substituted me July 4, '70. He stated afterwards that I returned the powers of attorney and contracts to him and went to his office after that and got them without his knowledge. This letter is asking Mr. Rittenhouse to have Mr. Peugh to get those powers of attorney from me. I now want to state that I never spoke to Mr. Musser, nor ever was in his office; and was in St. Louis but once, and that was in June, '71, until after 1872.

The letter is here offered in evidence and marked Exh. R. H. P. No. 2.

Witness resuming says: Musser has sworn that he filed all the memorials—all the depositions on the claims—Parsons, Standish & Conrow, in fact all the papers in these cases in the State Department I now state that he didn't file any of them—that every paper filed in the Department in these cases was either filed by myself or under my instructions; and in evidence hereof I have offered in evidence a certified copy of a paper, the original of which is on file in the State Department, marked Exh. R. H. P. No. 3.

(Counsel for Porter here offers in evidence certified copies of certain papers from the originals, now on file in the State Department, marked Exhibits R. H. P. Nos. 4 and 5.)

Q. Are you acquainted with S. V. White, a banker in New York?

A. I am.

Q. Did you ever see him write?

A. I did.

Q. Would you know his handwriting if you saw it?

A. I would.

Q. Look at the letter now handed you and say in whose handwriting it is?

A. It is in Mr. S. V. White's handwriting.

The same being offered in evidence & marked Exh. R. H. P. No. 6.

Q. Look at the letter now handed you, signed S. V. White, per J.

Brownell, purporting to come from the banking house of S. V. White, and say whether you received this letter in due course of mail and treated the same as having been written by the authority of White?

A. I did, and so treated it.

The same being here offered in evidence marked Exh. R. H. P. No. 7.

Q. State, as near as you can, the aggregate sum of money received by you from White, and whether or not the said sum was received all at one time.

256 A. It would be difficult for me to give the exact amount as it was received from him at different times, and in small amounts, covering a period of about two years, and then not all in money, but, as near as I can approximate, from all things and all resources I have got, it was near $12,000. I have a letter from Mr. White upon the subject on which he proposes for $12,000 to return me all the papers and assignments touching these claims that he has of mine. I will file the letter with the examiner hereafter.

Q. Look at the deed now handed you, dated 22d Sept., 1876, executed by Stephen V. White and Eliza M. C. White, his wife, of the city of Brooklyn, to Frederick K. Porter, of Long Branch, N. Jersey, for the consideration of $12,000, subject to certain incumbrances therein set forth, and say who is Frederick K. Porter, and how much did you realize from said property, and whether or not the said $12,000 was Mr. White's valuation of the property after all the incumbrances were paid off.

A. Frederick K. Porter is my son. This deed was made to him at my request. The property was valued by Mr. White, & so represented it to me as being worth at least $12,000, and more; after paying all the incumbrances upon it, I realized in and about $1,500 or $1,600.

(The deed is here offered in evidence, marked Exhibit R. H. P. No. 8.)

Q. You say you received from time to time from White in various sums, aggregating, as you think, about $12,000. Do you include this last sum of $1,500 or $1,600 in that amount?

A. I do.

At 12.45 Mr. Johnson announced the close of the examination-in-chief of Dr. Porter.

Whereupon the hearing was adjourned to Mar. 9, '80, at 11 o'clock a. m.

MAR 9, '80.

Met pursuant to adjournment.

Present: Counsel for complainant, Mr. J. J. Johnson; for def't Porter, Mr. Peugh in proper person. Mr. Ingle for def't Winder, and Mr. Th. Jessup Miller for def't McManus.

Before the examination of Dr. Porter was proceeded with, the original letter from S. V. White, dated March 24, 1879, to the wit-

ness Porter, and spoken of by said witness in his examination-in-chief given on the 8th day of March, 1880, was offered in evidence, and by consent of counsel, a copy whereof made by the examiner was agreed might be filed instead of the original, the same being marked Exh. R. H. P. No. 9.

Whereupon counsel for complainant objects to the introduction of the four copies marked Exh. No. 5, as incompetent and irrelevant.

Examined by Mr. PIKE:

Q. Are you *are* an attorney-at-law?

A. I am not.

Q. You have testified that the first knowledge you had in regard to the robbery and murder of Messrs. Parsons, Conrow, and Standish was acquired by you from the reading of the newspaper. State, if you can, the name of that paper, and when published.

257 A. My recollection is, that it was the St. Louis, Missouri, Republican, soon after it occurred.

Q. Why did you, in your letter dated New York, Sept. 27, 1869, addressed to Col. R. H. Musser, inform him that it was Major Chiles who first told you about the claims?

(Objected to unless the original letter is produced.)

A. I don't know that I did write such a letter, but if I did I remember what the cause of it. I think Chiles was the first one that mentioned that these claims might be made good claims for prosecution before the commission.

Q. State specifically what were the terms of your agreement with Col. Musser in regard to the prosecution of the claims whereof you have spoken in your examination-in-chief?

A. I had no specific terms with Col. Musser. I merely employed him to do certain things, for which I was to pay him his expenses, and if I was successful in the end, and obtained a large judgment, that I would pay him liberally for what he might do.

Q. Was it not distinctly agreed by and between you and Col. Musser that you would defray out of your own money all the expenses to be incurred in and about the prosecution of said claims, and that whatever fees the claimants should agree to pay should be divided between yourself and Col. Musser?

A. There never was any such agreement, nor was there ever any such conversation.

Q. Do you now swear that you never wrote a letter, in your own handwriting, in which you distinctly stated that it was a part of the agreement between you and Col. Musser that you would defray all the expenses in the prosecution of said claims?

A. I have no recollection of any such letter, but I do recollect that I was to defray all the expenses, and did defray them.

Q. You have testified in chief in regard to an interview with Messrs. Pike and Johnson at their office, at which Messrs. Winder, Peugh, and Rittenhouse were present. State now whether it was not then and there distinctly admitted by you and in your behalf that

you and Col. Musser were each equally interested in the fees agreed to be paid for the prosecution of said claims.

A. I did not so state it, or authorize anybody to state it for me. There never was such an understanding.

Q. Was there not at that time a paper drawn up by Mr. Winder, with your knowledge and approval, to that very effect, and tendered to Col. R. W. Johnson, with the request that he should unite in the same?

A. If you have got that paper produce it.

Q. Do I understand you as denying that such paper was drawn up.

A. I don't deny it, as some paper was drawn up without my full approval; but what it contained I do not now remember.

258 You have testified in chief that you had in your possession the original agreements as to fees executed and delivered by the claimants to Col. R. H. Musser. What disposition have you made of those papers?

A. I filed all the papers that I had in the State Department, except those I gave Mr. White.

Q. Do I understand you as swearing that you either filed in the State Department or delivered to Mr. White the particular papers asked about in my last interrogatory?

A. All the papers I had in those cases, except some copies I have, I either filed or gave Mr. White, unless I have some which I have overlooked.

Q. Were the particular papers filed in the State Department?

A. I gave them to Mr. White to file them there.

Q. What portion of the duties pertinent to the prosecution of these claims were you to perform?

A. In connection with Col. Musser? I would state that I had no agreement with any one, being principal in the case.

Q. Give the name of any witness whose affidavit was filed before and received by the commission as part of the testimony in support of the prosecution of said claims that you personally took.

A. I didn't take any, sir, or file any that I pretended to take.

Q. What argument or brief did you prepare yourself and submit in the prosecution of said claims?

A. There were four or five arguments prepared and submitted that I assisted in.

Q. How did you assist in that preparation?

A. By writing out and talking about the cases, and giving opinions and suggestions.

Q. Is it not true that every affidavit that was submitted to and received by the commission as the testimony in support of said claims taken by Col. Musser?

A. It is not true. He took the deposition of Gen'l Clark, Capt. Siler, which were sent here corrected, and sent back to these gentlemen to be signed, at an expense of $25 and $30, respectively, to me. Some of the other depositions, and most of them, were written by Mr. Ellerbie, I being present and directing the matter, and sent to the parties to be signed, and for them to make such corrections as they thought proper, and sent here either by Mr. Ellerbie by my di-

rection, or by myself. I superintended everything that was done in this case, from the writing of the memorials down to the submitting the cases.

Q. You have spoken about correcting the affidavits of Siler and Clark. Did not that correction simply consist in having left out the statement that was therein made that Parsons, Conrow, and Standish had been Confederate officers?

A. I don't know now what was left out; but the first affidavits were thought very objectionable, but I don't remember what the objectionable matter consisted of.

259 Q. You have spoken of Mr. Ellerbie, and have also heretofore undertaken to introduce evidence on your behalf, a copy of an *ex parte* affidavit of his. State now if the said Ellerbie is a creditable person, whose statement under oath is entitled to full faith and credit.

(Objected to, as proper foundation has not been laid.)

A. I believe if Mr. Ellerbie was entirely sober and himself he would not swear to a lie, but if under the influence of liquor I don't know what he would do. I know of one instance where he made a statement that was entirely false, but when shown papers to refresh his mind he corrected it to some extent. I believed then, and believe now, that he was drunk at that time, and didn't know what he was doing. I mean the time he made the first statement—the false statement.

Q. You have testified in chief that you received, in 1874, from Mrs. Standish and Mr. Parsons, respectively, their letters of attorney and agreements as to fees. Did not Mrs. Standish immediately thereafter repudiate said papers, and did not Mr. Parsons immediately thereafter revoke his letter of attorney, on the ground, as he alleged, that you had obtained them from him through misrepresentation; and did not each refuse to recognize you thereafter as having any authority or right under said papers?

A. They never did revoke their powers of attorney to me, or to anybody else that I know of. On the contrary, young Parsons stated in my presence, and in the presence of two or three other gentlemen, that he was satisfied that I rendered the services, and was entitled to the money to pay. After the judgments were rendered I called to see Mrs. Standish, in company with Judge Davis, knowing that Colonel Musser had been to see her to get her to make an assignment. I reminded Mrs. Standish of her promise to me and of the power of attorney I held, and requested her to give me an additional paper to secure my rights. She said she wished Colonel Musser and I would settle the difficulty between us; that she had been advised not to sign any more papers for any one. Therefore she declined to sign for me.

Q. Did you not, in the year 1875, bring suit in the circuit court for the county of St. Louis, Missouri, against Mrs. Standish and Colonel Musser, predicated upon the letter of attorney and agreement as to fees you alleged Mrs. Standish made to you in 1874, and did you not, in your bill in that suit, charge fraud and collusion against

Mrs. Standish and Colonel Musser, and seek to have the validity of said alleged 1874 letter of attorney and agreement as to fees, and the right you claimed thereunder, established by judicial determination?

(Objected to, as irrelevant.)

A. I brought a suit for injunction against Mrs. Standish to enjoin her from making powers of attorney, &c., and also against Colonel Musser from receiving the power of attorney, setting up the fact that the fees in the case belonged to me, and to prevent her from complicating the matter any more, believing that she was inclined to prejudice my claim; she had been talked to and prejudiced so
260 against me that she was incapable of doing me justice. I sought by this means to prove to her that she was indebted to me for the prosecution of her claim. The judge decided that he had no jurisdiction over the case.

Q. Did not both Mrs. Standish and the said Parsons testify as witnesses against you in the trial in said cause?

A. Mrs. Standish did surely show that she was highly prejudiced against me, so much so that she lent herself as far as it was possible for her to go against me. Mr. Parsons, I don't remember what he testified to, except I do know that he did not tell all that he could have told. He evidently had been tampered with.

Q. Did you not testify in the trial of that cause as a witness in your own behalf?

A. I did.

Q. Was not the judgment of the court adverse to you, being the absolute dismissal of your bill?

A. The court dismissed my bill; but I understand from my attorneys that the judge stated if he had had jurisdiction of the cause that he would have granted my petition; that I was entitled to my fees.

(So much of the answer as is in regard to the understanding of the witness, derived from his counsel, is objected to, as incompetent and irrelevant, being merely hearsay.)

Q. Was it not after this judgment that you made your sales, as you have testified in chief, to S. V. White?

A. It was.

Q. Was not your sales to White predicated of and under said 1874 letters of attorney and agreement as to fees?

A. Yes.

Q. What consideration did you express in your conveyances to White as received by you from him for the making of said sales?

A. I don't remember exactly, but in the two sales it would have been about $24,000, taking the house at $12,000.

Q. Have you ever paid or offered to pay to the plaintiff, John Chiles, or Col. R. H. Musser one dollar of the money you received from said White?

A. Not a cent.

Q. Have you sold or attempted a sale of any interest in the fee in the Conrow case.

A. I have not sold any interest, but have talked of it frequently.

Q. Do not your said sales to White purport to be absolutely of the fee agreed to be paid in the Standish & Parsons cases?

A. It does, I think, sir.

By Mr. INGLE:

I know the defendant, Charles H. Winder. I had a contract with Mr. Winder to assist me in the prosecution of the claims in controversy, to pay him when the cases were decided, and I collected the fees. The fee which I was to pay Winder was 4 p. c., but the contract has been annulled by paying him money at different
261 times, and an understanding between Mr. Winder and myself, because of the unexpected expenses I had been put to that I would not be held to the compliance of that contract. In regard to the four of five printed arguments I have mentioned in my testimony as having been filed with the commission were prepared by Mr. Winder and myself. I have no copies of those printed arguments, or of any of them.

R. H. PORTER.

Sworn to and subscribed before me, this 28th day of April, A. D. 1880.

JOHN A. CLARKE, *Examiner.*

EXHIBIT R. H. P. No. 1.

OFFICE OF R. H. MUSSER,
Attorney-at-Law, 318 Market Street,
ST. LOUIS, *Aug.* 29, 1870.

DR. PORTER:

I have received the papers from Governor Sherman by express. They are very voluminous, and required to be gone through with. Judge Moody, an eminent and experienced lawyer, has been retained to assist me, and the bill will be prepared in a few days. The term of the court is in November next.

Your ob't servant, R. H. MUSSER.

EXHIBIT R. H. P. No. 2.

OFFICE OF R. H. MUSSER,
Attorney-at-Law, 318 Market Street,
ST. LOUIS, *February* 6, 1871.

C. E. RITTENHOUSE, Esq., *Washington, D. C.:*

I am in receipt of your favor of the 1st inst., containing information about the Mexican claims. As Dr. Porter had not disclosed to me the facts concerning his arrangements with Mr. Peugh, and has been inclined to be reticent, I must beg to enquire what share or contingent of interest he agreed to give of the claims if recovered. I must also beg to know if Mr. Peugh is in possession of the con-

tracts entered into between the claimants and myself, as also of certain powers of attorney from them to me, and in which, for certain purposes, I substituted Dr. Porter by endorsement. I have not been able to get Dr. Porter to return them to me. I have no desire to disturb any arrangement made with Mr. Peugh within the scope of those contracts and those powers. But I think it only consistent with my duty to my clients to obtain from you and Mr. P. information Dr. P. has not furnished me. I was not aware you had furnished him $300.00, and I am quite certain he has not expended the money in procuring the testimony, as I paid my own expenses, except for the Arkansas deposition.

Your ob't servant, R. H. MUSSER.

EXHIBIT R. H. P. No. 3.

262 UNITED STATES OF AMERICA, DEPARTMENT OF STATE.

To all whom these presents shall come, Greeting:

I certify that the papers hereto annexed are true copies from the files of this Department.

In testimony whereof I, William M. Evarts, Secretary of State of the United States, have hereunto subscribed my name and caused the seal of the Department of State to be affixed.

Done at the city of Washington, this 20th day of January, A. D. 1880, and of the Independence of the United States of America the one hundred and fourth.

[SEAL.] WM. M. EVARTS.

Copy.

No. 318 MARKET ST., ST. LOUIS, *May* 9, 1870.

C. E. RITTENHOUSE, Esq., *Washington City, D. C.*

DEAR SIR: I have this day sent you by express (Adams') the following papers: The original memorials, 30 printed copies in English and Spanish of each memorial and the depositions in each case, in the following cases, to wit: Standish's widow *v.* Mexico, Conrow *v.* Mexico, and Parsons' heir *v.* Mexico. The printed copies of the memorials (in Spanish) are all correct, both in translation and printing. There are some clerical errors in the printed copy (English) of the Parsons' memorial, but none of importance. The English copies in the other two are correct. The depositions are all perfect in the case of Parsons, but in the other two memorials the depositions are not complete. We have not received the depositions of Capt. Siler for those two cases, but are looking for them every day, and will send them to you as soon as received. Dr. Porter, at whose request this letter is written, is in Kansas City, and will return to St. Louis this week.

Yours respectfully, C. P. ELLERBIE.

List of Depositions.

In case of Parsons: James L. Minor and others, G. A. Parsons, John B. Clark. Certificate of appointment of Jackson L. Smith. James W. Siler; upon this one the whole case depends.

In case of Standish: James L. Minor and others, H. Clay Ewing, John B. Clark. Certificate of appointment of guardian and deposition of Capt. Siler (not yet in).

In the case of Conrow: John B. Clark, John Allen, Caleb Conrow, C. Y. Gamier, Alex Deniphan, Joseph E. Block, David Quiesenberry, L. L. Taylor, and deposition of Capt. Siler (not yet in).

There is no certificate of ap'tment of guardian in the case of Mrs. Conrow, there being no guardian or administrator of the estate, Conrow being in very destitute circumstances. Smith was ass't curator of est. of Parsons on the death of Mrs. Parsons in 1864.

Please acknowledge the receipt as soon as received.

S. P. ELLERBIE.

263 EXHIBIT R. H. P. No. 4.

UNITED STATES OF AMERICA, DEPARTMENT OF STATE.

To whom all these presents shall come, Greeting:

I certify that the document hereto annexed is a true copy from the records in this Department.

In testimony whereof, I, William M. Evarts, Secretary of State of the United States, have hereunto subscribed my name and caused the seal of the Department of State to be affixed.

Done at the city of Washington this 21st day of January, A. D. 1880, and of the Independence of the United States of America the one hundred and fourth.

[SEAL.] WM. M. EVARTS.

In the Joint Commission of the United States and Mexico under the convention of July 4, 1868.

SATURDAY, *January* 20, 1872.

The commissioners now give notice that all claims by the United States *vs.* Mexico, and all claims by the latter government *vs.* the former, not disposed of before that date, will, on the first day of April next, be entered "heard," whereupon the commission will proceed immediately to dispose of them, in obedience to the requirements of the convention.

True copy from the record:

RANDOLPH COYLE,
J. CARLOS MEXIA,
Secretaries.

EXHIBIT R. H. P. No. 5.

UNITED STATES OF AMERICA, DEPARTMENT OF STATE.

To whom all these presents shall come, Greeting:

I certify that the papers hereto annexed are true copies from the files of this Department.

In testimony whereof, I, William M. Evarts, Secretary of State of the United States, have hereto subscribed my name and caused the seal of the Department of State to be affixed.

Done at the city of Washington, this 20th day of January, A. D. 1880, and of the Independence of the United States of America, the one hundred and fourth.

[SEAL.] WM. M. EVARTS.

Copy.

RICHMOND, MO., *June* 5, 1875.

Col. R. H. MUSSER:

Your letter of the — instant is at hand, and contents duly noted. We had hoped that when the umpire had made his final award that there would be no further difficulty or annoyance on our part; we have always shown the greatest willingness to do exactly what we promised, viz., to retain one-half of the gross amount that should be received, and give the other to the agents and attorneys by whose skill and labor the result was obtained. But we have been subjected to continued solicitations and annoyances growing out of your own imprudence, not in any way out of ours. You first substituted Dr. Porter as an attorney, and assigned him our contracts with you, he was here yes-
264 terday, and I confess I was greatly surprised after all that had passed between us to find these in your own handwriting. We never saw him before now; knew nothing of him; it was all done by yourself, without consulting us in any way, at your solicitation and upon your assurance that it would be satisfactory to Winder, whom you had seen to have a new power of attorney made to Col. Johnson, we done so. Now, I only state these things, in no unkindness, but simply to bring before you that all these annoyances have grown out of your own action, and not ours. Now, remember, my daughter, Mrs. Conrow, is a lady who has had to undergo more than her share of sorrow and suffering, mental and physical; that she should be rendered nervous and sensitive by these unnecessary, unceasing annoyances. We require that these matters, not with us properly, but wholly with you and those who you have brought into this case should be settled; there are certainly some gentlemen left in your profession with honesty and ability to adjust all your conflicting interests. We desire to avail ourselves of our interest or half of the result, and you yours, and that no further impediment be placed in our way. We are advised by good lawyers here that you having substituted Dr. Porter, and assigned our contracts, that having a power coupled with an interest, we would be safe in giving him power to close up the matter. But law and justice are not always the same thing, and we are determined to do nothing unjust or inequitable to any one in this or any other matter. But this must be adjusted; it is due to yourself and us; we all wish to avail ourselves of the award, you told me you did. We confidently hope you will see with us the necessity of closing this. We said nothing to Dr. Porter, but after a night's thought we have thought best to write him a letter similar to this, which we have done to-day, and advised him we have written to you. I am very sorry that the negotiations proposed and attempted a few days since,

looking to the adjustment of this unfortunate difficulty, proved a failure; don't let the matter rest in this doubtful condition, but "try again," and I doubt not but if in the proper spirit of compromise these matters of honest but conflicting differences and interest be submitted to some hon. attorney or attorneys as arbitrators or umpires, these differences will be fully and, I trust, amicably settled, so that when the award is ready for payment there will be no outside matters to settle, nothing to do but receive and receipt.

Yours, truly, DAVID H. QUIESENBERRY.

Copy.

ST. LOUIS, *April* 15, 1870.

DEAR SIR: I send you the printed memorial M. Parsons, the other two will be finished in a day or two. I intended to have had these printed in Washington, but if they are all right it as well to have it done here, it will save a large amount of work that Peugh
265 would had to have done. Have these examined, and if they are all right the others will be ready in a few days. Musser will start to Arkansas very soon, as I wrote you, and complete the testimony.

Yours, R. H. PORTER.

Copy.

At the request of Dr. R. H. Porter, I make the following statement: In the year 1869, I was passing on the street in company Col. R. M. Renick, and met Dr. Porter, who stated to me that he was making arrangements to prevent the Mexican Claims Commission, for indemnity for the murder of Gen. M. M. Parsons, Col. Conrow, and Col. Standish, and that he entertained no doubt of success; that he was here from Washington city on that business.

He stated to me that he wanted to get some good reliable attorney here to assist him in collecting the evidence and taking depositions, &c. Col. Renick and myself recommended him to employ Col R. H. Musser, which I afterwards learned both from him and Musser he had done.

Subsequently, I was informed by Dr. Porter that Col. Musser had taken the powers of att'y from the parties in interest to himself, in his (Musser's) own name. Porter said he objected to this and Musser said it would make no difference with him (Musser) and Porter. Musser said he had a little pride in the matter of having in his own name, &c., appear on the docket at Washington. Previous to this conversation I never heard of these claims; had no knowledge of them or their existence until I heard it from Dr. Porter. This conversation with Porter about what Musser said about appearing on record at Washington, &c., was a few months after I recommended Musser to Porter.

Given under my hand, this 1st day of July, 1875.

WM. SHIELDS.

Sworn to and subscribed to before the undersigned, a notary public within and for the county of St. Louis, this first day of July, 1875.

C. C. STRETER,
Notary Public.

A true copy:
CHAS. PAYSON,
Third Assistant Secretary of State.
January 19, 1880.

Copy.

CITY OF JEFFERSON, MO., *March 2d*, 1872.

Dr. R. H. PORTER,
No. 419 10th St., Washington, D. C.

DEAR SIR: Yours to Mrs. Col. A. M. Standish was read by me. I beg leave to that I do not know anything in relation to the subject-matter of your letter. But as you refer us to gentlemen whom I know, I will proceed to investigate the matter and endeavor to do right by you. I have written to Col. Musser for an explanation. Your letter greatly embarrasses me for the reason Col. Musser has never intimated your connection with the case. He certainly has acted strangely in the premises.

Col. Musser has my obligation to himself whereby I am
266 bound to pay him part of any sum recovered in consideration of his prosecuting the claim at his own expense.

I will endeavor to speedily disentangle myself and furnish you proper authority to act for me in the case. At the suggestion of Mr. ——, I herein enclose you affidavits as to what Parsons would have realized from his practice of the law had he not been murdered.

Parsons was my partner in law and my friend, and I am very anxious to secure something for his orphan boy and widowed sister, Mrs. Standish.

Yours, truly, J. S. SMITH.

A true copy.
CHAS. PAYSON,
Third Assistant Secretary of State.
January 19, 1880.

EXHIBIT R. H. P. No. 6.

S. V. WHITE, BANKER, 8 WALL STREET,
NEW YORK, *July 17th*, 1878.

Dr. R. H. PORTER,
242 *West Broadway, Louisville, Kentucky.*

DEAR SIR: Your several letters found me here yesterday. I have kept the Dep't of State advised that I would be in attendance when they were ready to act, about Aug. 1st, in my two cases of Standish *vs.* Mexico & Parsons *vs.* Same. In the Conrow case you must act, as I have no regular power of substitution.

I am personally known to Mr. Evarts, and believe that when the claims are payable he will pay me in spite of the blackmailers.

Truly yours, (Signed) S. V. WHITE.

The above is a true copy of the original letter filed in the case of Chiles *vs.* Porter *et al.*, 6703, Eq. Doc. 19, sup. ct. D. C., and marked Exh. R. H. P. No. 6. The same being substituted for the original taken by Dr. R. H. Porter (Mar. 15, 1880).

JNO. A. CLARK,
Examiner.

EXHIBIT R. H. P. No. 7.

S. V. WHITE, BANKER, 8 WALL STREET,
NEW YORK, *June* 12, 1877.

R. H. PORTER, M. D., *Louisville, Ky.*

DR. SIR: I send with this papers in the matter of the assignment of the Standish claim. You see I make them very specific to myself, and I shall immediately lodge the whole of the papers in the State Department. As there was a question of the minor children, I have had an affidavit drawn showing that ½ was a fair compensation in the case for the work done by you.

Please execute the affidavit as well as the assignment. Execute the assignment in the presence of two witnesses.

You ought to get this in time to execute and remail Thursday. If so, I can have your money in Louisville on Monday.

Truly yours,
S. V. WHITE,
Per J. BROWNELL.

267 EXHIBIT R. H. P. No. 8.

This indenture, made the twenty-second day of September, in the year one thousand eight hundred and seventy-six, between Stephen V. White and Eliza M. C. White, his wife, of the city of Brooklyn, county of Kings, State of New York, parties of the first part, and Frederick K. Porter, of the village of Long Branch, county of Monmouth, State of New Jersey, party of the second part, witnesseth: That the said parties of the first part, for and in consideration of the sum of twelve thousand dollars, lawful money of the United States of America, to them in hand paid by the said party of the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, and the said party of the second part, his heirs, executors, and administrators, forever released and discharged from the same by these presents, have granted, bargained, sold, aliened, remised, released, conveyed, and confirmed, and by these presents do grant, bargain, sell, and alien, remise, release, convey, and confirm, unto the said party of the second part, and to his heirs and assigns forever, all that certain lot, piece, or parcel of land, with the improvements thereon, situate, lying, and being in the seventh ward of the city of Brooklyn aforesaid, and bounded and described as follows: Beginning at a point on

the southerly side of Lafayette avenue, distant one hundred and twenty-two feet eleven inches westerly from the southwesterly corner of Lafayette and Grand avenues; running thence southerly, on a line parallel with Grand avenue, and a part of the way through a party wall one hundred feet; thence westerly, on a line parallel with Lafayette avenue, nineteen feet five inches; thence northerly again, on a line parallel with said Grand avenue, and part of the way through a party wall, one hundred feet to the northerly side of said Lafayette avenue; thence easterly along Lafayette avenue nineteen feet five inches to the point or place of beginning; being the same property conveyed to the said Stephen V. White by deed of Anna Maud Cone and husband, dated July 31, 1875, and recorded in the register's office of Kings county, in liber 1211, on page 346, on the 2d day of August, 1875, together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof; and also all the estate, right, title, interest, dower, and right of dower, property, possession, claim, and demand whatsoever, as well in law as in equity, of the said parties of the first part of, in, and to the same, and every part and parcel thereof, with the appurtenances. To have and to hold the above granted, bargained, and described premises, with the appurtenances, unto the said party of the second part, his heirs and assigns, to his or their own proper use, benefit, and behoof forever:

268 Subject, nevertheless, to a certain indenture of mortgage now on said premises given to secure the payment of the sum of six thousand dollars and interest; also to another mortgage made and executed by Ann Maud Cone and Edward P. Cone, her husband, to John S. J. King and William Vause to secure the payment of the sum of twenty-five hundred dollars and interest, both of which mortgages the party hereto of the second part assures, covenants, and agrees to pay, it being expressly stipulated between the parties hereto that the balance remaining unpaid thereon is fifteen hundred dollars and interest from Jan. 1, 1876, and no more.

And the said Stephen V. White, for himself and his heirs, executors, and administrators, does hereby covenant, grant, and agree to and with the said party of the second part, his heirs and assigns, that the said Stephen V. White, at the time of the sealing and delivery of these presents, is lawfully seized in his own right of a good, absolute, and indefeasible estate of inheritance in fee simple, of and in all and singular the above granted, bargained, and described premises, with the appurtenances, subject as aforesaid, and has good right, full power, and lawful authority to grant, bargain, sell, and convey the same in manner and form aforesaid. And that the said party of the second part, his heirs and assigns, shall and may at all times thereafter peaceably and quietly have, hold, use, occupy, possess, and enjoy the above-granted premises, and every part and parcel thereof, with the appurtenances, without any let, suit, trouble, molestation, eviction, or disturbance of the said parties of the first part, their heirs or assigns, or of any other person or persons lawfully

claiming or to claim the same. And that the same now are free, clear, discharged, and unincumbered of and from all former and other grants, titles, charges, estates, judgments, taxes, assessments, and encumbrance of what nature and kind soever except as above. And also that the said parties of the first part, and their heirs, and all and every other person or persons whatever, lawfully or equitably deriving any estate, right, title, or interest of, in, or to the hereinbefore granted premises, by, from, under, or in trust for them, or either of them, shall and will, at any time or times hereafter, upon the reasonable request, and at the proper costs and charges in the law, of the said party of the second part, his heirs and assigns, make, do, and execute, or cause or procure to be made, done, and executed, all and every such further and other lawful and reasonable acts, conveyances, and assurances in the law for the better and more effectually vesting and confirming the premises hereby intended to be granted in and to the said party of the second part, his heirs, assigns, forever, as by the said party of the second part, his heirs or assigns, or his counsel learned in the law, shall be reasonably devised, advised, or required.

And the said parties of the first part, their heirs, the above-
269 described and hereby granted and released premises, and every part and parcel thereof, with the appurtenances unto the said party of the second part, his heirs and assigns, against the said parties of the first part, their heirs, and against all and every person or persons whomsoever lawfully claiming or to claim the same, shall and will warrant and by these presents forever defend.

In witness whereof, the said parties of the first part have hereunto set their hand and seal the day and year first above written.

S. W. WHITE. [SEAL.]
ELIZA M. C. WHITE. [SEAL.]

Sealed and delivered in the presence of—
FRANK H. ANTHONY,
Notary Public, Kings Co.

STATE OF NEW YORK, } ss:
County of Kings, }

On this twenty-second day of September, in the year of our Lord one thousand eight hundred and seventy-six, before me personally came Stephen V. White and Eliza M. C. White, his wife, to me known to be the individuals described in, and who executed the within conveyance, who each acknowledged that they executed the same. And the said Eliza M. C. White, on a private examination by me made separate and apart from her said husband, acknowledged to me that she executed the same, and relinquished dower in the premises conveyed freely and without any undue compulsion of her said husband.

In testimony whereof, I have hereunto set my hand and affixed my seal the date last herein written.

[SEAL.] FRANK H. ANTHONY,
Notary Public, Kings Co.

Recorded in the register's office, Kings county, in liber 1253, conveyances, pages 495, September 22, 1876, at 15 minutes past 12 p. m.

Witness my hand — official seal.

WM. BARRE, *Register.*

EXHIBIT R. H. P. No. 9.

S. V. WHITE, Banker, 8 Wall Street,
NEW YORK, *March* 24, 1879.

R. H. PORTER, *Washington D. C.:*

I will reassign all the interest I received from you for $12,000, and give you up your notes, besides, for more than $3,350.

Yours, truly, (Signed) S. V. WHITE.

270 In the Supreme Court of the District of Columbia.

JOHN CHILES
vs.
RICH'D H. PORTER *et al.* } 6703. Eq. Doc. 20.

At an examination held before me, an examiner in chancery, commencing on the 24th day of April, and ending on the 27th day of same month, 1880, the within-named witness, Christopher P. Ellerbe, was produced in rebuttal, on the call of the complainant, and after being duly sworn by me, the within deposition was written by me from the statements made by the witness, read to him, and by him signed in my presence.

Mr. Luther H. Pike appeared for complainant, Mr. J. J. Johnson for def't Porter, C. Ingle for def't Winder, and Mr. S. A. Peugh, *p. p.*

JNO. A. CLARKE, *Examiner.*

Accompanying this deposition are five exhibits, marked respectively, "C. P. E," No. 1, and J. A. C., Nos. 1, 2, 3, and 4.

JNO. A. CLARKE, *Examiner.*

In the Supreme Court of the District of Columbia.

CHILES
vs.
PORTER *et al.* } 6703. Eq. Doc. 20.

Please take notice, that on Saturday, April 24th, 1880, at the hour of one o'clock p. m. of said day, at the office of L. H. Pike, Esq., 602 D street N. W., I shall proceed to take the testimony in rebuttal of witnesses, on the call of complainant.

JNO. A. CLARKE, *Examiner.*

Services acknowledged this 21st day of April, A. D. 1880.

LUTHER H. PIKE,
Att'y for Chiles, Pl'ff.

I certify that I duly notified by postal card, mailed at the city P. O., Apr. 21, '80, def't Peugh and Messrs. Hughes, Buchanan, and DeWees, counsel for defendant Rittenhouse.

JNO. A. CLARKE, *Examiner.*

271 In the Supreme Court of the District of Columbia.

CHILES
vs. } 6703. Eq. Doc. 20.
PORTER *et al.*

APR. 24, '80.

A short time before the hour of meeting the examiner was notified by Mr. L. H. Pike, of counsel for complainant, that the hearing had been continued to April 26th, '80, at one o'clock p. m., owing to engagement of complainant's counsel.

APRIL 26TH, '80.

Met pursuant to adjournment.

Present: Counsel for complainant, J. J. Johnson, Esq., for def't Porter, S. A. Peugh, Esq., in *propria personæ*, C. Ingle, Esq., for def't Winder.

Whereupon CHRISTOPHER P. ELLERBE, a witness of lawful age produced in rebuttal in behalf of complainant, being sworn, says:

Examined by Mr. PIKE:

I live in St. Louis county, Missouri, and practice law in the city of St. Louis.

Q. Where were you residing in the years 1869 and '70?

A. In the city of St. Louis, Missouri.

Q. In what business were you engaged?

A. In the practice of law.

Q. Are you acquainted with one Richard H. Musser, of the city of St. Louis? If yea, state how and when you became acquainted with him; what his business is, and whether you had any business relations with him.

A. Yes, I know Richard H. Musser. He now lives in Chariton county, Missouri. I first knew him in 1868, when I went to Missouri to live. In 1869, in June or July of that year, through the intervention of R. M. Field, I became associated, not in copartnership, however, with Richard H. Musser and so remained until the close of the year, 1872. Musser is a lawyer and previous to my association with him he had been in copartnership with Mr. Decker.

Q. Are you acquainted with Dr. Richard H. Porter? If yea, state when and how you became acquainted with him.

A. Yes, I know him. I first met him in October or latter part of September, in 1869, and was introduced to him by Musser in his, Musser's office, in St. Louis.

Q. Have you any knowledge or information in regard to the prosecution of the claims of Mistress Mildred Standish, Mrs. Mary Ann Conrow, and Jackson L. Smith, as curator of Stephen K. Parsons,

against the Republic of Mexico, before the Joint Commission between the United States and Mexico, under the treaty of July 4, 1868? If yea, state how such information was acquired by you.

A. Yes, I know of those claims and have known of them since Sept., 1869. My first knowledge came from a letter written me in Sept., 1869, by R. H. Musser from St. Louis to Alabama, where I was temporarily. Subsequently on my return to St. Louis the latter part of Sept. or the first of October, 1869, I learned from R. H. Musser the exact nature of these three claims.

272 Q. Were you ever present at any conversation or conversations between Doctor Porter and said Musser, held in regard to said claims and their prosecution?

A. Yes, numbers of conversations during the fall of 1869, the spring and early summer of 1870, and the latter part of 1870. Perhaps I had better state that on my return from Alabama in Sept., 1869, I found Dr. Porter in our office, and was told by Musser when introduced to Porter, what Porter's business was, and in that connection; and in subsequent conversations these claims were discussed.

Q. Did you ever do any work in and about the prosecution of these claims? If yea, state at whose instance and request.

A. Yes. I did, and by the direction of R. W. Musser, in whose employment I then was.

Q. What relationship did Col. Musser have to the prosecution of these said claims that you were so acting under his direction?

A. He was engaged as a lawyer as well as attorney-in-fact for the persons claiming indemnity from the Mexican Government. He held at that time, or shortly after that time, powers of attorney for and contracts with these several claimants.

Q. Did you, at any one or more of the conversations had between said Musser and Porter at which you were present, hear said Porter claim or said Musser admit that he, Musser, was the employee of Dr. Porter for the procuring of said powers of attorney from the claimants and for doing work in and about the prosecution of said claims?

(Objected to, as leading.)

A. Mr. Porter never made any such claim, directly or indirectly, neither did Musser, making any such admission.

Q. From what you heard in the conversation between Dr. Porter and said Musser, did you understand whether or not there was any contract or agreement between them in regard to the prosecution of said claims?

(Objected to, the witness understanding must state the fact if he knows it.)

A. I know there was no contract in writing ever in existence between them, and know also from their conversations and admissions in my presence and in the presence of each other that there was a verbal contract or agreement between them, and know its terms in substance.

Q. What were the terms of that parol agreement or contract?

A. That Musser was to procure contracts with and powers of attorney from the heirs of General Parsons, Col's Conrow and Standish for the prosecution of these claims, as well as any other claims of a similar nature: that Musser was to do or have done the necessary preparation of the cases, as far as it could be done away from Washington city; that Dr. Porter was to advance money for the procurement of testimony, and to look after and see to the prosecution of the cases before the commission. As to the exact terms of the fees there was from the beginning, as I now recollect it, a difference between them, Porter claiming that all money advanced was to be returned before any division of the profits, and Musser claiming that the money advanced must come out Porter's share. I have tried to state that contract or agreement correctly, and I am satisfied that I have stated it as it existed.

273 Q. Did you ever, at any time prior to the early part of the year 1871, hear said Porter claim or said Musser admit that he, Musser, was to receive from him, Porter, a reasonable compensation for such services as he, Musser, should render in and about the prosecution of said claims?

A. I never did hear Musser make any such admission at all, nor Porter make any claim of that kind prior to 1871 or '72. In 1871 or '72, Dr. Porter made such a claim as that in my presence in a conversation with me in St. Louis.

Q. Whom did you recognize as the person having principal charge of the prosecutions of said claims?

(Objected to, as inadmissible and irrelevant.)

A. I recognize principally, Richard H. Musser, but as far as any work that I did, obeyed the instructions or directions of Dr. Porter as well as Col. Musser, provided Porter's instructions conflicted in no way with what Musser had directed me to do.

Q. Did Dr. Porter know of Col. Musser giving your instructions in regard to work being done by you in and about the prosecution of said claims?

A. Yes; Porter was in our office nearly every day. There were a great many papers and letters and communications of all sorts that had accumulated in these claims, and as Porter frequently wanted to see them, and Musser was out of the office, Musser instructed me to take charge of everything that pertained to these claims, and keep them in my own desk, and in that way Porter frequently applied to me to see the papers, and sometimes in Musser's absence told me what to do about them.

Q. Did Dr. Porter ever deny to you the right of Colonel Musser to give you such instruction?

A. He did not.

Q. What did Colonel Musser do in and about the preparation and prosecution of said claims?

A. On my return from Alabama in September or October, 1869, Musser showed me a batch of letters, communications, concerning these claims, which were answers he had received to letters written

by him. He then proceeded to hunt up evidence of the time, place, and circumstances of the murder of Parsons, Conrow, and Standish. He wrote innumerable letters to different gentlemen who had been in Mexico immediately after the close of the rebellion.

He had a great deal of difficulty in finding any one by whom it could be shown that these gentlemen were murdered by the Juarez troops. There were numerous letters written by him or by me under his directions to the legal representatives of these gentlemen; also letters to Washington city to various persons—Mr. Ashton, and to some lawyers here. He prepared a memorial in each of these cases, sent those memorials to Washington, where they were revised by gentlemen here—a Mr. Winder, if I recollect correctly. He, Musser, procured the appointment of an administrator in either the Conrow or Standish case; had the memorials sworn to by the proper persons, and in the Parsons case had a great deal of difficulty in getting the curator of young Parsons to swear to the memorial. Musser then had these memorials translated into Spanish, and had them printed in Spanish and English. He, I think, superintended in person the taking of the testimony, and made use of his
274 (Musser's) acquaintance with the Missourians who were engaged in the rebellion in procuring evidence of the journey made by General Parsons and others into Mexico, and of their murder.

Q. Give as near as you can the number of witnesses whose testimony was procured by Colonel Musser.

A. That I can't do, unless I am permitted to refer to the record of the commission. One important one I can recall—that of Captain Siler—which was taken in Arkansas.

Q. What was the difficulty in the Parson's case?

A. Mr. Jackson L. Smith, the present attorney-general of Missouri, was the curator of young Parsons, and under the direction of the commission or the lawyers at Washington, who had charge of these cases, to have these memorials sworn to, not by the attorney, but by the claimants, and Mr. Smith declined to swear to this memorial of Parsons, upon the ground that the facts stated he didn't know to be true, and for the second reason that General Parsons, having been engaged in the rebellion, wasn't entitled to the protection of the United States Government, meaning by that the heirs had no cause of action. I think under Musser's direction I went to Jefferson City to see Mr. Smith about this matter, but I can't say now whether or not he ever swore to the memorial.

Q. In what particulars did the revision of the memorials consist?

A. In the striking out of all allusions as far as possible to the rebellion—that is, to the fact of Parsons, Conrow, and Standish having been engaged in the rebellion—and also in striking out some allegations which were thought to be immaterial. No other changes were made, as I now recollect.

Q. Give, if you can, the name of the person who translated the memorials into Spanish; also the name of the person who printed the same.

A. A man named Coleman, then employed in the city translator's

office in St. Louis, translated the memorials, and McKittrick & Co., of St. Louis, printed them.

Q. I exhibit here to you a certain paper heretofore offered in evidence in this cause as part of the testimony of Dr. Porter, testifying as a witness in his own behalf, and marked Exh. R. H. P. No. 3, and which purports to be a copy of a certain letter addressed by you, dated St. Louis, May 9, 1870, to C. E. Rittenhouse, Esq., Washington, D. C. Please examine the same, and if you find it to be substantially a correct copy of a letter so written by you to Mr. Rittenhouse, state why and under what circumstances you wrote the original letter.

A. This is substantially a copy of a letter written by me to Mr. Rittenhouse. I saw the original letter in St. Louis a few years ago. When this letter was written Musser was absent, I think in Arkansas, taking Siler's deposition. A letter came from Washington City hurrying the matter up. It was addressed to Musser. Porter, who was just about to go to Kansas City, suggested if Musser didn't return in a day or so that I send on what papers I had, which I did, Musser not retaining.

Adj'd to April 27, '80, at 10 a. m.

275 APRIL 27, '80.

Met pursuant to adjournment.

Present: Counsel for complainant, J. J. Johnson, Esq., for defendant, Porter, and S. A. Peugh, in his proper person; whereupon the examination-in-chief of the witness ELLERBIE was resumed.

By Mr. L. H. PIKE:

Q. State, if you know, what papers were executed and delivered by the claimants, respectively, to evidence their employment of Musser and their agreements with him as to his compensation?

A. Each of the claimants gave Musser a power of attorney, and also made with him a contract, which contract gave him, as I now recollect, one-half of all what might be recovered. These contracts and powers of attorney were given to Richard H. Musser individually.

Q. Were these papers, with others heretofore spoken of by you, placed in your custody by Colonel Musser?

A. Yes, they were; and so remained until they were given by me to Dr. Porter. These papers were given to me to take care of, and I gave them to Dr. Porter. Porter could have got them at any time, he having as free access to them as Musser.

Q. Have you any personal knowledge of Colonel Musser having endorsed a substitution to Dr. Porter on the letters of attorney?

A. I have no personal knowledge of that fact—that is, at the time the endorsement was made. I have since seen the powers of attorney, they being shown me by Dr. Porter in 1871 or '72 in St. Louis, and the endorsement is in the handwriting of R. H. Musser, being dated July 4, 1870. What transpired between Musser and Porter at the time of the endorsement I am unable to say, as at that date I was in Alabama.

Q. Did you or not, at any time between the said 4th day of July, 1870, and the fall of the year 1871, hear Dr. Porter claim, or Colonel Musser, admit, that the endorsement of substitution on said letters of attorney were intended by Colonel Musser to operate as a surrender by him of all his powers of attorney thereunder to said Porter?

(Objected to, as leading and inadmissible.)

A. No; I never heard Porter make that claim or Musser make that admission. Those papers were given to Dr. Porter by me for the purpose, as I understood it, of money being raised for Musser's and Porter's benefit, and until I was shown the endorsement by Dr. Porter, and saw its date, I was under the firm impression that I was present when the endorsement was made, and so stated when testifying in this matter heretofore; but after seeing the endorsement I was satisfied that I was not present, and knew nothing of what transpired between Musser and Porter at the time of the endorsements, and that my knowledge of the fact that the papers were endorsed and delivered to Porter for the purpose of raising money was obtained from various letters from Porter to Musser, written
276 from New York, Philadelphia, and perhaps Washington city, in July and August, 1870, which letters remained in my possession until I turned them over to Col. Musser, in 1871 or '72.

Q. Do you know whether or not Col. Musser and Dr. Porter tried subsequently to the 4th day of July, 1870, to raise money in St. Louis, Mo., on said letters of attorney and agreements as to fees. If yea, state the particulars thereof.

A. Yes. In the fall of 1870, I think as late as October, but certainly after the 1st of September, Musser & Porter offered to hypothecate these letters of attorney, and I think also the contracts to me as security for $1,000. At this date, I have no recollection as to whether the papers were shown me, but presume they were. I had a judgment against the estate, or minor heirs of Henry B. Brant, of St. Louis, for $5,000.00, upon which a stay of execution had been granted for twelve months, and which judgment was paid in March, 1871. Porter & Musser wanted me to raise the money on that judgment for them, and to take those papers as security, which I declined to do.

Q. Were you present at the trial of a certain cause in St. Louis county, there impending between Richard H. Porter, plaintiff, and Rich'd H. Musser and Mildred Standish, defendants? If yea, state what was the action of the court on said trial.

A. Yes! I was present at the trial of that case, and testified as a witness, having been called by both plaintiff and defendants. The court, sitting as a jury, heard the plaintiff's case, or part of it, and then made the plaintiff take a nonsuit, deciding, as I now recollect it, that that court had no jurisdiction of the subject-matter. Subsequently, the judge, Lindley, set aside the non-suit, and heard the whole case upon its merits and rendered a judgment in favor of the defendants. I desire to state that I testified in that cause in St. Louis and was examined upon the two affidavits theretofore made

by me concerning this Musser and Porter business. The first of these affidavits was made by me at the request of Rich'd H. Musser and is dated March 6th, 1872. This paper here is a correct copy of that affidavit.

The same is here offered in evidence, & marked Exh. C. P. E. No. 1.

Witness resuming, says: This affidavit was made, as I have stated, at Musser's request. He & Dr. Porter having fallen out about this matter, and the direct cause being for the affidavit being made, was a letter written by Dr. Porter to Mistress Conrow, which letter was sent by Mrs. Conrow to Musser, and an explanation asked of the Porter letter. I had at that time all of the letters and correspondence concerning these claims as well as receipts for whatever money had been expended concerning them by Musser, and with those papers before me wrote this affidavit (Exh. "C. P. E." No. 1). Subsequently, Dr. Porter came to St. Louis, and came to see me
277 and stated that he had seen the affidavit above referred to, that it was in some respects incorrect and did him a gross injustice, and at his request I made another affidavit intending to correct whatever was incorrectly stated in the former, and gave it to Dr. Porter. This second affidavit was made in the office of Davis & Thoroughman, of St. Louis, then Dr. Porter's attorneys. At that time I was shown the powers of attorney, and saw the date of the substitution and also saw other papers pertaining to the matter which were in Porter's possession, and which I had not seen when the first affidavit was being made.

Q. Dr. Porter, testifying as a witness on his own behalf in this cause, was asked the following question: "While you were in St. Louis, where did Musser live?" To which he responded as follows: "I lived at the Southern Hotel. Mr. Musser lived in spots—in no particular place. His friends Col. Renick and Gen'l Shields, in recommending him to me for employment, said that he was so poor that he didn't get a square meal once a week, except when he came to their house on Sundays, which he did almost every Sunday. Mr. Musser, as every one who knew him, knew that he was without money and had no credit. I learned after this difficulty between him and me that he had no standing as a lawyer, and that he was so well known as a liar, that it amounted almost as a disease to him; that he was very little better than a pauper; he hardly ever paid a bill at a hotel, boarding-house, or steamboat travel. That in my first acquaintance in this matter with him, I was mortified by my attention being called to his exceeding bad dress, to remove somewhat I gave him a new hat and requested him to fix himself up decently." Is this statement of Dr. Porter's correct or incorrect?

(Objected to, as immaterial.)

A. In some respects that statement is correct and in others very incorrect. During the time Dr. Porter was in St. Louis he lived part of the time in the city of St. Louis, at the Southern Hotel; part of the time in Bobb's building on Market street, and for a while in

1870 he lived at 812 Pine St., and occupied a room between the rooms of Musser and myself. In 1868 Musser had a fair practice at law, and made enough money to support himself and his mother and sister, who were dependent on him. From 1869 to 1872 he lived at 812 Pine St. He and I occupied adjoining rooms. Col. Musser is a very improvident and careless man, and inherently shabby in his dress. He is a man of undoubted truth and veracity, and is the associate of the better class of people in Missouri, and the personal friend of quite a number of people of more than ordinary standing. He is very fond of going to dinner, and I believe dined alternately with Gen'l Shields, Col. Rennick, and Gen'l Frost every Sunday. I recollect Porter's giving him a hat. Col. Musser is perhaps as well known as any man in Missouri. I have known him intimately and have never known him to be untruthful or dishonest in any manner whatever.

I desire to state that I have no interest directly or indirectly in this matter, and have never had; that I have never received any compensation or any services rendered in these cases, and
278 have no claim against Porter, Musser, or any one else connected with them; that I came here to testify as a witness at the instance of the plaintiff's counsel in the case, and because I had been informed that it was claimed there was a conflict between two affidavits made by me in this matter, and that my reputation as a man for truth and veracity had been assailed, and came here for the purpose of correcting any such impressions.

Cross-examined by Mr. JOHNSON, on behalf of defendant Porter:

Q. At the time Musser introduced you to Porter in Sept., 1869, had they entered into a verbal agreement relating to the prosecution of the claims in question?

A. I presume so, sir, but could only form that presumption from their subsequent conversation, and when I stated their agreement in my examination heretofore, I did not intend to be understood that Musser and Porter had in my presence made any agreement as to how this matter was to be carried on; that I never heard either one say "I am to have one-half and you the other."

Q. During 1869 and 1870 was Porter in Musser's office frequently; if so, approximate the number of times?

A. He was there nearly every day, and I saw him much more frequently even than that.

Q. In your examination-in-chief you say "those papers," meaning the power of substitution to Porter were given by me to Porter for the express purpose, as I understand it, for raising money for Porter and Musser's benefit. State if you know whether or not that money was used for expenses in proving up these claims, or was it for the purpose of prosecuting some land scheme that Musser and Porter had in view, or was it to be used by them *ad libitum*.

A. That I can't say, except that I know that all the money they wanted to borrow from me, both in the fall of 1869 and the fall of

1870, was to be used for the prosecutian of the land case as well as for the prosecution of these claims.

Q. You have also said in chief that at a certain trial in St. Louis, mentioned in your deposition-in-chief at the first trial the plaintiff took a nonsuit, which was subsequently set aside and the heard upon its merits, and judgment rendered for defendants. Can you state the wording or substance of the wording of the judgment upon the docket?

A. I cannot; I never saw the entry; simply recollect generally there was a judgment for the defendants. I believe the opinion of the judge was published in the newspapers, but don't think I ever read it. I had no earthly interest in it.

Q. If you recollect, state whether or not the judgment as rendered was based upon the want of jurisdiction of the court in that case.

A. I think, but am in no way certain that the court rendered a judgment upon the merits of the case for the defendants, but stated in its opinion that there was no use for him to try the case, for if he had rendered judgment for the plaintiff he could not enforce it, but whether that statement was made during the trial of the case or in the opinion of the court, or at the time the plaintiff was nonsuited.

279 Q. Mr. Ellerbe, state, if you can, approximately how much would be the expense for taking the depositions or affidavits of witnesses in this case?

A. I can't say, but the affidavits could not have cost much, with the exception of those of Siler's, which cost a good deal. Some of the affidavits only cost the notarial fee. In some instances lawyers to whom the affidavits were sent to procure the oath charged a small fee.

Q. Do you know, of your own knowledge, of Porter's ever paying any money to Col. Musser, or any one else, for the purpose of taking these affidavits, or any of them?

I recollect that Porter handed Musser the money to pay Musser's expenses to Arkansas in taking Siler's deposition, but Musser claimed to me subsequently, but not in Porter's presence, however, in a settlement between Musser and myself, that he had repaid Porter that money, and produced in that settlement a cancelled check payable to Porter's order. Dr. Porter claimed that that check was for borrowed money. Porter also advanced some small sums of money, which was disbursed by me for affidavits and express charges, and if I am not mistaken, once paid me $10.00 for something in connection with this matter, but all of these sums of money, with the exception of the money used in going to Arkansas, the amount of which I don't recollect, were small.

(Here Mr. Peugh continues the cross-examination of the witness, Ellerbie, on his own behalf.)

Q. Do you know Mr. John Chiles, the plaintiff in this case?

A. Yes, sir; since 10 o'clock on the morning of the 26th day of April, A. D. 1880.

Q. Do you know S. A. Peugh and C. H. Winder, def'ts in this case; and, if so, how long?

A. I don't know Mr. Winder; know Mr. Peugh, and have known him a few hours less than I have known Major Chiles.

Q. This case is one in which a contract or partnership is sought to be established between Mr. Chiles, the pl'ff, and Dr. Porter, one of the defendants. Do you know anything on that subject?

The preamble to above question is objected to, as argumentative and being a question of law, and the whole question as being responsive to anything brought out on the examination-in-chief.

A. I don't know anything of any such copartnership, and never heard of Major Chiles until 1871, or '72, when Dr. Porter, in St. Louis, in discussing the origin of these claims, alluded to Major Chiles.

Q. In your examination-in-chief you alluded to Mr. C. E. Rittenhouse and some correspondence with him. Did you or did you not correspond with Mr. Rittenhouse for Mr. Musser and Dr. Porter in relation to these claims, and send papers to him in regard to them?

(Objected to, as inadmissible both by complainant's counsel and def't Porter.)

280 A. I recollect writing Mr. Rittenhouse one letter at Dr. Porter's direction, and sending him with that letter the memorials and affidavits in the three claims referred to.

CHRISTOPHER P. ELLERBE.

Sworn and subscribed to before me, this 27th day of April, A. D. 1880.

JNO. A. CLARKE, *Examiner.*

EXHIBIT "C. P. E." No. 1.

STATE OF MISSOURI, } ss:
County of St. Louis, }

My name is Christopher P. Ellerbe; I am twenty-six years old; was born in the State of Alabama, Dallas county; I am a lawyer, and have practiced law since 1868; I came to St. Louis in July, 1868, and in August, 1869, I went into the office of R. H. Musser, Esq., and have since remained; I am personally acquainted with Dr. R. H. Porter; have known him since October, 1860; in September, 1869, while on a visit to a former home in Alabama, I received several letters from R. H. Musser, Esq., telling me that he had been employed in some suits or claims against the Government of Mexico, and at the same time requesting me to see Gen. Cadmus Wilcox, formerly in the service of the United States, and recently a gen'l in the service of the late Confederate States, who had been in Mexico in 1865 and 1866, and learn if he knew anything of the death or murder of Gen. Parsons, Col. Conrow, and Col. Standish. I was unable to see Gen. Wilcox and heard nothing more of the matter till my return to St. Louis in October, 1869. As soon as I returned to

St. Louis Col. R. H. Musser introduced me to Dr. Porter, who was at that time in our office very frequently, and told me that he and Dr. Porter would prosecute certain claims against the Government of Mexico. The claims were in relation to the murder of Gen'l M. M. Parsons, Col. A. N. Conrow, and A. M. Standish, by the officers and soldiers of the Republic of Mexico. There were some other claims spoken of, but no steps were taken save in these cases. Dr. Porter and Col. Musser very frequently conversed with me in relation to these claims or suits. In fact I was always present at the consultations, and was consulted by them. Their agreement was simply this: Dr. Porter had been in Washington in the summer of 1869, and had heard of these claims, and came to St. Louis and proposed to Col. Musser to form some arrangement by which the above-mentioned claims could be prosecuted.

It was agreed between them in my presence that Col. Musser should prosecute these claims before the joint commission, and that as Col. Musser knew the families and heirs of the late M. M. Parsons, A. H. Conrow, and A. M. Standish personally, and had been on intimate terms with the families of the murdered men, he, Col. Musser, should get from them powers of attorney and contracts; that said powers and contracts should be made to him, Musser, individually; that he, Musser, should prepare the cases, and take all necessary evidence, Dr. Porter agreeing to advance all the money necessary to prepare the cases, and have the evi-
281 dence taken, and then to take the contracts, powers of attorney, and memorials to Washington city and raise money on them. Under this agreement, Col. Musser commenced work upon the cases, prepared the memorials, had the memorials sent to Washington city, and there examined by some attorney employed by Dr. Porter, procured powers of attorney and contracts from the parties, had the memorials translated into the Spanish language, and then had them printed; then went to Arkansas and had the evidence taken in three cases; prepared the cases fully and sent them to Washington city. I am aware of this, because all or nearly all of the original papers are in my handwriting, and the whole correspondence between R. H. Musser and Dr. Porter was read by me, and I have now and have always had all the letters written by Dr. Porter to Col. Musser in my possession, and have them now before me. I have also in my possession all the letters ever received from the parties in regard to this matter. I assisted Col. Musser in preparing the cases, and am perfectly acquainted with all the matters relating to them. Dr. Porter never complied with this part of the contract. He never, to my knowledge, advanced any money, save on one occasion, and that was to pay the expenses of Col. Musser's trip to Arkansas; but, to my certain knowledge, this was returned to him by Col. Musser. The expense incurred in translating and printing the memorials was paid by Col. Musser. Col. Musser paid all the expense incurred in getting the cases. Some money may have been advanced by Dr. Porter, but it was returned by Col. Musser, as will be shown by paid drafts and checks now in my possession. Dr. Porter was frequently in Washington city in the winter

of 1869 and 1870, and wrote very often to Col. Musser, promising in each letter to send money. I have all his letters before me now, and they have been in my possession since received, as well as all other papers and letters relating to these cases. Mr. Porter never sent any money, and his letters only show promises to do so. After the cases were prepared, and the memorials sent to Washington city, Dr. Porter took the powers of attorney and contracts to Washington to try and raise money on them either in Washington or New York. He wrote Col. Musser that he could not succeed, and on his return to St. Louis promised to return the papers to Col. Musser. The powers of attorney were returned, but he kept the contracts, saying that he could do so better than I, as he feared they might be lost. I had the powers of attorney in my possession for some time, and then at his request returned them to him, Dr. Porter. He, Dr. Porter, when asking for them, gave as a reason for so doing that Col. Musser might take them from my desk, and mislay or lose them, as he, Col. Musser, was careless about papers. I am satisfied that Dr. Porter did not advance any money to prepare any of these cases, for he made several propositions to me to advance money on these claims, and to advance the money to prosecute some
282 suits of his in Kansas. I know that he was frequently in need of money, and was unable to prosecute certain plans of his for a want of money. I did not know that he ever had or pretended to have any claims upon these cases until after he had gotten the contract and powers of attorney in his possession, and when Col. Musser received a letter from Mr. Rittenhouse in the spring of 1871. As Dr. Porter had not advanced any money, and not kept his part of the contract, I was under the impression that he had abandoned the whole matter, and so thought till I saw a letter written by him to Mrs. Conrow, accompanying some other papers, which are dated Feb'y 24th, 1872. This statement is made at the request of R. H. Musser, and because I was to-day shown a certain letter written by Dr. Porter to Mrs. Conrow, in which he, Dr. Porter, claims to have advanced all the money necessary and prepared all papers in the cases, and wherein he has ignored the services of R. H. Musser.

CHRISTOPHER ELLERBE.

UNITED STATES OF AMERICA, }
District of Missouri, } ss:

Christopher P. Ellerbe, being duly sworn, says on his oath that the matters and things stated in the foregoing affidavit are true, to the best of his knowledge and belief and information.

CHRISTOPHER P. ELLERBE.

Sworn to and subscribed by said Christopher P. Ellerbe before me, this 6th day of March, 1872.

LUCIEN EATON,
United States Commissioner, Mo. District.

J. A. C. 1.

UNITED STATES OF AMERICA, DEPARTMENT OF STATE.

To all to whom these presents shall come, Greeting:

I certify that the papers hereto annexed are true copies from the files of this Department.

In testimony whereof, I, William M. Evarts, Secretary of State of the United States, have hereunto subscribed my name and caused the seal of the Department of State to be affixed.

Done at the city of Washington, this 30th day of April, A. D. 1880, and of the Independence of the United States of America the one hundred and fourth.

[SEAL.] WM. M. EVARTS.

Petition. Filed Oct. 12th, 1875.

STATE OF MISSOURI, } ss:
County of St. Louis, }

In the Circuit Court of said County to the December Term.

RICHARD H. PORTER, Plaintiff,

v.

MILDRED STANDISH and RICHARD H. MUSSER, Defendants.

283 Plaintiff states that heretofore, to wit, on May 8th, 1874, he was engaged in the business of prosecuting claims before the public departments of the Government of the United States, as an attorney in fact, and agent, and said defendant, Mildred Standish, then had pending and undetermined before the joint commission created and then sitting under, and in pursuance of, the treaty existing between the United States and the Republic of Mexico, duly ratified and in force on the fourth day of July, A. D. 1868, and subsequently extended a certain claim against the Republic of Mexico for the murder and robbery of Austin M. Standish, late husband of said Mildred, and was then desirous of procuring the services and means of plaintiff, in and about the prosecution and allowance of said claim and for that purpose, a certain agreement in writing dated May 8th, 1874, which is herewith filed, was then made and entered into by and between said defendant, Mildred Standish, and plaintiff, whereby it was contracted and agreed that plaintiff should be and thereby was employed and empowered to prosecute said claim before the said commission, for defendant as widow and executrix of said deceased Austin M. Standish, and as guardian of her minor children, and that plaintiff should pay all expenses of said prosecution, and as compensation for said services should receive one-half of the net proceeds of said claim after deducting the expenses of said prosecution; and as a part of and in pursuance of said agreement, said Mildred Standish on said date executed, acknowledged, and delivered her power of attorney, in writing, which is filed herewith, and thereby made and constituted plaintiff her true and lawful attorney irrevocably for her, and in her name, place,

and stead, to prosecute her said claim, which agreement and power of attorney were by her delivered to plaintiff.

Plaintiff states that he in all respects complied with and performed the said agreement on his part and paid all the expenses of the prosecution of said claim before said commission, and rendered all the services required by said agreement or necessary in the premises, and that he necessarily incurred and paid in and about the same large costs and expenses, amounting in the aggregate to about $8——.

Plaintiff further states that such proceedings were had before said commission in respect to said claim that there was awarded and allowed thereon to said defendant Mildred Standish on the 12th day of April, 1875, the sum of forty thousand dollars in Mexican gold dollars, and the further sum of fifteen hundred dollars in Mexican gold dollars, with interest on said last sum at the rate of six per cent. per annum from the 15th day of August, 1865; which award and allowance was duly certified to and filed in the office of the Secretary of State of the United States, at the city of Washington, in the District of Columbia, and now remains in full force and effect, and the amount of said award will be paid to said Mildred Standish, or her assigns or representatives under and in pursuance of the terms of said treaty, out of the Treasury of the United States; plaintiff further states that under an order and regulation of the
284 Treasury Department of the United States, now in force, made and promulgated since May 8th, 1874, this plaintiff is prevented and deterred from collecting and receiving any part of said award of said commission, as agent or attorney of said Mildred Standish, under and in pursuance of said agreement and power of attorney; and the amount of said award remains payable to said Mildred Standish, or her assigns or representatives, under authority from her executed subsequent to said April 12th, 1875.

Plaintiff further states that said defendants have combined and confederated together to defraud plaintiff of his said due half share in the amount of said award, and of his costs and expenses by him paid and incurred as aforesaid; and to that end the said Mildred Standish, although often heretofore requested by plaintiff, has refused and now refuses to authorize and empower the plaintiff to receive and receipt for one-half or any part of the amount so awarded to her as aforesaid; plaintiff states that either the defendant, Mildred Standish, in pursuance of said fraudulent intent, has executed to the defendant Musser authority to collect and receive the amount of said award, or that unless restrained therefrom, she will execute such authority to him, and that by means thereof the said Musser will collect and receive the amount of said award so due and payable to plaintiff, as aforesaid, and appropriate the same to his own use.

And plaintiff states that each of said defendants is wholly insolvent, and any action at law against them, or either of them, would be wholly unavailing in the premises, and if said defendants, or either of them, shall receive said award, the plaintiff will be irreparably injured, and without adequate remedy. Plaintiff states that defend-

ant Musser, in pursuance with said fraudulent collusion with defendant Standish, gives out and pretends that he is, and plaintiff is not, entitled to receive said one-half of the amount of said award for said services rendered in and about the prosecution of said claim, and to collect and receive the same from the Treasury of the United States, and threatens that he will retain and receive the same for his own use, by means of authority now executed or to be executed by said Mildred Standish to him for that purpose; and plaintiff states that said Musser will so obtain and receive and appropriate to his own use the same if not restrained by this court.

Plaintiff states that under and by virtue of said agreement he is legally and equitably entitled to receive from said United States Treasury, when the same shall be disbursed by authority of law, the amount of his said expenses, and one-half of the net amount of said award, and for that purpose to have and receive written authority from defendant Standish, executed since the date of said award in accordance with said requirements of the Treasury Department, and defendant Musser has no legal or equitable right thereto.

285 Plaintiff therefore prays that defendant, Mildred Standish, be enjoined and restrained from executing and delivering to said Musser, or any other person, any written or other authority to receive and receipt for said part and interest of plaintiff in the amount of said award, and from receiving and receipting for the same in her own person, and that defendant Musser be enjoined and restrained from receiving and using any such authority, and if it shall appear that said Standish has executed, and said Musser has received, such authority, that the same be cancelled and annulled, and that said Standish be decreed specifically to execute and perform the said agreement with plaintiff, and for such orders, judgment, and relief as may be equitable and proper.

DAVIS,
THOROUGHMAN, AND
WARNER,
Pl'ff's Att'ys.

STATE OF MISSOURI, }
County of St. Louis, } ss:

Richard H. Porter, being duly sworn, says: That he is the plaintiff in the foregoing and entitled cause, and that he has heard the foregoing petition read, and knows the contents thereof, and that the matters and things therein stated are true, in substance and in fact; and affiant further states that he has good reasons to believe, and does believe, that the relief prayed for in the foregoing petition will be eminently endangered unless the temporary injunction prayed for be immediately granted.

H. W. PORTER.

Subscribed and sworn to before me, this October, 1875.

J. FRED. THORNTON, *Clerk.*

Filed Oct. 12th, 1875.

Temporary Injunction Granted.

In the Circuit Court of St. Louis County. October Term, A. D. 1875.

TUESDAY, *October 12th*, 1875.

RICHARD H. PORTER
v.
MILDRED STANDISH and RICHARD H. MUSSER.

Now at this day comes the plaintiff, by attorneys, and files his petition, duly verified by affidavit, praying for a restraining order and injunction against the defendants, which, being heard, and duly considered, it is ordered by the court that, upon the plaintiff giving an injunction bond in the penal sum of one thousand dollars, with surety, to be approved by the court, conditioned according to law, that the defendant, Mildred Standish, her agents, servants, and employees, be enjoined and restrained from executing and delivering to said defendant, Richard H. Musser, or any other person, any written or other authority to receive and receipt for the part and interest of plaintiff in the amount of a certain allowance made by the Joint Commission created under and in pursuance of the treaty between the United States and Republic of Mexico, duly ratified and in force on the 4th day of July, A. D. 1868, under a certain claim
286 against the Republic of Mexico, for the murder and robbery of Austin M. Standish, late husband of said Mildred Standish, and from receiving or receipting for the same in her own person; and also that the defendant, Richard H. Musser, his agent, servants, or employees, be enjoined and restrained from receiving and using any such authority until the further order of this court.

Bond filed and approved.
[SEAL.] J. FRED. THORNTON, *Clerk.*

A true copy from the record, attest with seal of court.
Filed Oct. 12th, 1875.

Sheriff's Return.

Executed this order of court in St. Louis county on the 13th day of October, 1875, by reading said order of court to Mildred Standish and Richard H. Musser, the within-named defendants.

EMILE THOMAS, *Sheriff*,
By DENNIS O'CONNOR, *Deputy.*

Fee, $2.00.

In the Circuit Court of St. Louis County, in the State of Missouri.
December Term, 1875.

RICHARD H. PORTER, Plaintiff,
v.
MILDRED H. STANDISH and RICHARD H. MUSSER, Defendants.

Now come the defendant, Milred Standish, by her attorney, and for her separate answer to the plaintiff's petition filed herein says as

follows: She has not knowledge or information sufficient to form a belief as to whether the plaintiff, on the 8th day of May, 1874, was engaged in the business of prosecuting claims before the public departments of the Government of the United States as an attorney-in-fact and agent or not. She admits that at the date aforesaid she had pending before the joint commission created, and then sitting under and in pursuance of the treaty between the United States and the Republic of Mexico duly ratified on the fourth of July, 1868, and subsequently extended, a certain claim against the Republic of Mexico for the murder and robbery of Austin M. Standish, her late husband; but she utterly denies that she was then or at any other time had been desirous of procuring the services and means of plaintiff in and about the prosecution and allowance thereof; and the contrary the plaintiff was desirious of obtaining from her authority therefor, and she says it is not true that for that purpose a certain agreement in writing, bearing date May 8th, 1874, was then and there made and entered into by and between her and the plaintiff, whereby it was contracted and agreed that the plaintiff should be, and thereby was, employed and empowered to prosecute said claim before said commission for her, as widow and executrix of said deceased Austin M. Standish, and as guardian of her minor children, and that plaintiff should pay all expenses of said prosecution, and as a consideration thereof, should receive one-half of
287 the net proceeds of said claim, after deducting the expenses of said prosecution. Nor is it true that in pursuance of and as a part of said pretended agreement in writing this defendant on said date executed and acknowledged and delivered her power of attorney in writing, and thereby made and constituted plaintiff her true and lawful attorney in fact, irrevocable, for her and her name, place, and stead to prosecute her said claim. She states that at said date, and for a long time prior thereto, she had able and faithful attorneys employed and engaged in the prosecution of said claim. She says it is not true that the plaintiff in all respects, or in any respect whatever, fully complied with and performed on his part pretended agreement. Nor is it true that plaintiff paid all the expenses of the prosecution of said claim before said joint commission and rendered on his part all the services required by said pretended agreement, or necessary in the premises; neither is it true that plaintiff necessarily incurred and paid in and about said claim large costs and expenses under said pretended agreement, or any costs and expenses whatever thereunder. And she denies that the plaintiff rendered her any services whatever under said pretended agreement in prosecuting her said claim before said joint commission, or that he possessed any means or money with which to aid her in the prosecution thereof; or that he expended any money or incurred any expenses in and about the prosecution of said claim under said pretended agreement, or that he has any claim either in law or in equity to any part of said award, or that this defendant is indebted to him on any account whatever.

This defendant admits that under an order and regulation of the Treasury Department of the United States now in force, the plaintiff

is prevented from collecting and receiving any part of said award as agent or attorney under said pretended agreement and power of attorney, and she says that, independent of and in the absence of any such order or regulation, the plaintiff could not collect and receive from the Treasury Department any part of said award. She says that said pretended agreement and power of attorney do not in fact, nor do they pretend or purport to confer on the plaintiff any right or authority to collect from the Treasury Department or from the disbursing officer of said award any part thereof, and the plaintiff never possessed any such right or authority either in virtue of said pretended agreement and power of attorney or otherwise. She admits that this amount of said award is payable to this defendant, and when minor children or assigns and representatives under authority duly executed, since the allowance of said award. She says that it is not true that she has combined and confederated with her co-defendant, Musser, to defraud the plaintiff out of his pretended one-half share and interest in the amount of said award, and his costs and expenses by him paid or pretended to have been paid and incurred by him as aforesaid, as alleged by the plaintiff; is not true that to that end this defendant, although often requested by plaintiff, has refused and now refuses to authorize and empower the plaintiff to receive and receipt for one-half, or any other part of said award; nor is it true that in pursuance of any fraudulent combination and confederation between this defendant and her co-
288 defendant, Musser, or in pursuance of any fraudulent intent whatever, that this defendant has executed to her co-defendant, Musser, authority to collect and receive the amount of said award; nor is it true that unless restrained therefrom she will so execute such authority, and that by means thereof said Musser will collect and receive the amount of said award pretended to be due and payable to the plaintiff and appropriate the same to his own use.

This defendant unequivocally denies that she and her co-defendant have combined and confederated together to defraud the plaintiff out of any share or interest in said award, or out of any costs and expenses by him paid and incurred as stated, or out of any sum whatever; and she denies that to that end she has refused and now refuses to authorize and empower the plaintiff to receive and receipt for one-half or any other part of the amount of said award; or that in pursuance of such fraudulent intent, she has or will execute to said Musser authority to collect and receive the amount of such award, or that by means thereof said Musser will collect and receive and appropriate to his own use the amount of said award alleged to be due and payable to the plaintiff; and she denies any fraudulent combination and confederation with said Musser for any purpose whatever and any fraudulent intent whatever. She says it is not true that each of the defendants herein named is wholly insolvent, and that an action at law against them, or either of them, would be wholly unavailing in the premises. On the contrary, she says she is wholly solvent; that is the owner in her own right of real estate situated in the State of Missouri, and that she is not in debt. She

says it is not true that if the defendants herein, or either of them, shall receive said award, the plaintiff will be irreparably injured and without adequate remedy, nor will he be injured at all, as she avers; and she says it is not true that in pursuance of any fraudulent collusion with this defendant, the defendant Musser gives out and pretends that he is and that plaintiff is not entitled to receive one-half of the amount of said award for services rendered in and about the prosecution of said claim, and to collect and receive the same from the Treasury of the United States; nor is it true that said Musser, in pursuance of any fraudulent collusion with this defendant, threatens that he will obtain and receive the same for his own use by means of authority now executed or to be executed by this defendant for that purpose by the said Musser, or any other person; and she denies that the said Musser will so obtain and receive and appropriate the same to his own use, if not restrained by this court; and she denies any fraudulent collusion with her co-defenant, Musser, for any purpose whatever.

This defendant says it is not true that under and by virtue of said pretended agreement the plaintiff is legally or equitably entitled to receive from the United States Treasury, when the same be disbursed by authority of law, the amount of his pretended expenses and one-half of the net amount of said award, and for that
289 purpose to have and receive written authority from this defendant, executed since the date of said award, in accordance with said requirements of the Treasury Department; nor is it true that defendant Musser has no legal or equitable right thereto.

For a further defense she says it is true she signed her name to the papers filed with the plaintiff's petition, purporting to be an agreement and a power of attorney; but she states that her signatures thereto were obtained by the false and fraudulent statements and representations of the plaintiff and of his agent and accomplice, one John D. Crafton, who, as this defendant believes and charges, had combined and conspired together for that purpose. She states that she never desired the services or means of the plaintiff in and about the prosecution of said claim; that plaintiff applied to her for permission and authority to do so; that she had all the time competent attorneys to manage and conduct the prosecution thereof; that, as early as December, 1869, she employed her co-defendant, Musser, to get up the evidence and prosecute said claims before said joint commission, and agreed to give him therefor one-half of the net amount recovered, and gave him a power of attorney for that purpose; that shortly thereafter said Musser prepared a memorial to said joint commission in behalf of this defendant and her minor children, claiming as damages for the robbery and murder of the late husband of this defendant, said Austin M. Standish, the sum of one hundred and ten thousand dollars, and at once proceeded to the looking up and taking, at his own expense, testimony in support of said claim; that, as she is informed and believes, he not only visited Arkansas in person for the purpose of procuring testimony, but sent to Texas and Mexico, where he caused testimony to be taken in support thereof; that soon after the filing of said me-

morial and testimony, taken as aforesaid in support of said claim, said Musser, finding it necessary to have eminent counsel residing at Washington city to take charge of and prosecute said claim before said joint commission, employed for that purpose Messrs. Pike and Johnson, attorneys of the Supreme Court at Washington, and for the purpose of better enabling them to do so, this defendant, at the instance of said Musser, appointed them her attorneys in fact for that purpose, agreeing to pay them for their services and the services of said Musser, the compensation she agreed to pay said Musser; that at this time said Musser had already obtained and filed considerable proof in support of said claim; that soon after the employment of the said Pike and Johnson, as aforesaid, they took charge of the prosecution thereof before said joint commission, and through their energy, skill, and vigilance in prosecution thereof, and the diligence of said Musser, in procuring and, at his own expense, filing proof in support thereof, the said claim was, on the 12th day of March, 1875, prosecuted to a successful *de*termination, and an award obtained in favor of the claimants, for the amount stated in the plaintiff's petition. This defendant states that she never delivered to the plaintiff the papers filed with his petition purporting to be an agreement between plaintiff and this defendant; that her signature thereto and possession thereof by said plaintiff was obtained by false and fraudulent statements and representations of the plaintiff and
290 his said agent and accomplice, the said John D. Crafton; that on or about the 5th day of March, 1874, the said John D. Crafton, claiming to represent and be agent for and in behalf of the plaintiff, called at the residence of this defendant, in Jefferson City, Missouri, and represented to her that her said attorneys, the said Musser and the said Pike and Johnson, had been faithless to her in the performance of their duties as her attorneys; that they had abandoned her case, and that no one of them was giving attention to the prosecution of the claim in behalf of this defendant and her children before said joint commission, and that the same would be lost in consequence thereof; that the adjudication and allowance had been delayed for several years by reason of the failure of this defendant's attorneys to procure and file the necessary proofs, and to give the business their attention; that the proofs taken and filed by her attorneys were insufficient to obtain an allowance in her favor; that plaintiff had, at his own expense, procured proofs adequate to establish the right of this defendant and her children to a recovery, and that plaintiff would file said proofs with said joint commission if this defendant would sign and deliver to him a certain paper, which said Crafton then and there produced for that purpose, and that said proofs would inevitably secure to this defendant and her children the allowance of said claim; that if this defendant refused to sign said paper, plaintiff would withhold said proofs, and thereby defeat said claim; and, further, that the signing of said paper would not in any way injure the rights of said Musser, but would inure to his benefit, and, also, that said Musser had long since abandoned all

interest in said claim, and trusted to Pike and Johnson, who gave it no attention whatever.

This defendant further states that at the time of said statement and representations said Crafton was her neighbor at Jefferson City aforesaid; that he urged and importuned her to sign said paper as the only means of saving her claim; that he pretended to be disinterested, and to be acting the part of a friend and neighbor in the matter.

She further states that at the time of said statements and representations she was ignorant of the fact that they were base falsehoods, and without foundation, as she subsequently heard; that she was ignorant of the fact that all necessary proofs in support of said claim had been filed by her attorneys, and the claim submitted to the joint commission on the proofs and argument of her attorneys for their determination. She states that said facts were studiously and fraudulently withheld from her by plaintiff and said Crafton, although then well known to them; that she had no acquaintance with or confidence in the plaintiff's capacity to conduct her case before said joint commission; that he had for some years past been sending impertinent and importunate letters to her in relation to her business, which she refused to acknowledge; that said letters were full of bad spelling and impertinence, and bore abundant evidence both of ignorance and audacity of plaintiff, and that she never would have signed said papers but for the interposition of said Crafton as aforesaid, and of this fact
291 she believes and charges that plaintiff was well aware, and that in consequence thereof the said Crafton was employed by plaintiff for the purpose of obtaining her signature to said paper, the plaintiff furnishing him with the false statements and representations used and employed by said Crafton in obtaining the same; that, relying upon the truth of said statements and representations, and the pretended friendship of said Crafton, she signed her name at the bottom of said paper, purporting to be an agreement between plaintiff and this defendant, and on or about the 5th day of April, 1874, delivered the same to her nephew, S. Kearney Parsons, with instructions to submit the same to her co-defendant, Musser, at the city of St. Louis, for his examination and approval; and if the same was approved by said Musser, and he consented thereto, then said Parsons was authorized to deliver the same to the plaintiff, but in no event was he to deliver the same to said plaintiff or to said Crafton for him without the approval and consent of said Musser, it being the intention of this defendant to be entirely governed in the premises by the advice of her co-defendant, Musser, and she so instructed said Parsons; that the plaintiff and said Crafton, in pursuance of their fraudulent combination and purposes, succeeded in obtaining said paper from said Parsons without the same having been submitted to said Musser for his approval and advice, and without the knowledge or consent of said Musser, and against the instructions of this defendant to said Parsons, although the conditions on which it was delivered to said Parsons were well known to the plaintiff and his said agent and accomplice, Crafton.

That as soon as this defendant learned that said paper had not been submitted to said Musser by said Parsons, as she had instructed him to do, she informed said Musser of what had been done, and she then for the first time learned of the falsity of the statements of said Crafton, and that her claim had already been argued and submitted to the joint commission for their determination, and that no additional proofs could be filed, and that any proofs plaintiff might have were worthless. After she had received this information said Crafton again called on her and requested her to sign her name to an endorsement, to be written on said paper, to the following effect: "I hereby revoke the power of attorney given to R. H. Musser, as he has failed to attend to my business;" which she refused to do. That shortly thereafter, to wit, on or about the 15th day of June, 1874, she received from the said attorneys, Pike and Johnson, copies of the opinion of the commissioners delivered on her claim; also, a copy of the order referring her claim to Sir Edward Thornton, as umpire, for final determination. She states that the statements and representations made by the said Crafton as aforesaid were utterly false and without foundation, and were well known to be so, both by said Crafton and said plaintiff, and were made with the view and for the purpose of deceiving and defrauding this defendant. She states that neither the said Musser, nor said Pike and Johnson, had abandoned her claim, or had failed to file the necessary proof therein, or to give such attention thereto as it required. That the said claim had been argued before the said joint commission by said Pike and Johnson, and submitted for their determination
292 on the proofs then on file on the 10th day of July, 1873. That under the rules of said joint commission no other or further proofs could thereafter be filed, or could or would be considered if filed; all of which was well known to the plaintiff.

She states that the plaintiff never filed any proofs in support of her claim before said joint commission after he obtained the possession of said pretended agreement, nor did he pay or incur any costs and expense in and about the prosecution thereof, or render this defendant any services whatever therein after said date. That there was no consideration for said pretended agreement, and the same is void, as well for failure of consideration as because of the fraudulent conduct of the plaintiff in obtaining the signature of this defendant thereto, as also for the further fact that same was never delivered to the plaintiff by this defendant, or by her authority and consent, and she prays that the same may be ordered cancelled and delivered up to her.

She further states that since plaintiff obtained possession of said paper the date thereof has been changed, and other alterations and additions made therein by plaintiff without the knowledge or consent of this defendant, which said changes and alterations render said paper a forgery and inoperative against the defendant.

She further states that her minor children, to wit, Richard Adolphus Standish, Austin Davey Standish, and Monroe Parson Standish, heirs-at-law of the said Austin M. Standish, deceased, are jointly and equally interested in said award with this defendant. That she

had no legal authority to bind them, or either of them, by said pretended agreement, and that they, nor either of them, are bound thereby. That each of them own one-fourth thereof, and that it is not competent for this honorable court to take the same, or any part thereof, to compensate plaintiff for any real or pretended services rendered by him under said pretended agreement; and she avers that her said minor children are necessary and proper parties to a complete determination of this cause.

She further says that said pretended agreement is inoperative and void because a mere right of action or claim growing out of (tort) is not assignable, and that plaintiffs cannot be sustained as a contingent fee because the same would be champerty and against public policy. She states that the paper filed with plaintiff's petition, purporting to be a power of attorney, was obtained from her by means of the same and like false and fraudulent statements and representations that were used and employed by plaintiff in obtaining said pretended agreement.

And she says it is not true plaintiff in all respects, or in any respect, complied with and performed the said pretended agreement on his part; and it is not true that he paid any expenses of the prosecution of said claim or rendered any services thereabout after he obtained possession of said pretended agreement and power of attorney or after the date thereof; nor is it true that he incurred any costs and expenses after said date in the prosecution thereof.

The truth is, all the testimony ever filed in said case had been filed before said date and before plaintiff obtained the possession of said pretended agreement and power of attorney, and no new or additional testimony was or could be filed before the umpire; that plaintiff never did file any such testimony as he pretended to have or did have, and if he had filed it it would not have been considered, as he must have known and did know that he never did anything whatever in regard to the case after said pretended agreement, and knew when he obtained said papers that he could not, so that the false and fraudulent statements made as aforesaid by plaintiff were wilfully made for the purpose of deceiving this defendant, he at the time knowing them to be false.

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She states that her co-defendant Musser and her said attorneys-in-fact, Messrs. Pike and Johnson, performed well all they undertook and agreed to do, and when the amount of said award shall be paid she intends to pay them in accordance with her agreement; that the plaintiff is not entitled to any part of or interest in said award, because she never employed him to attend to her case, nor would her attorney have accepted him as an associate. 2d. Because he was not competent to manage her case if he had been employed, he not being an attorney-at-law or skilled or learned in the law, but pretendingly a doctor of medicine. 3d. Because he never had any right to the possession of said pretended agreement or power of attorney or authority to prosecute her said claim. 4th. Because he used the most barefaced falsehood in regard to her attorneys, having abandoned her case, and his having evidence without which her case would surely be lost, but with which it could be gained, and which

he would — retained if not employed, when he knew it was worthless, it being too late to file, and which he never did file, and when the evidence on file was sufficient, all for the purpose of persuading and inducing this defendant to employ him. 5th. Because he knew the case had been submitted, and he could render no service. 6th. Because he never did render any service.

This defendant submits that there is nothing in plaintiff's petition which, either in law or equity, authorizes this honorable court to enjoin her from executing and delivering to said Musser or any other person written or other authority to receive and receipt for any part of the whole of said award or from receiving and receipting the same in her own name; nor is there anything in said petition which would authorize or justify this honorable court in enjoining said Musser from receiving or using any such authority, or to authorize this court to annul and cancel any such authority; and she denies the right of this honorable court to decree the specific execution of said pretended agreement or to grant any of the relief prayed.

Further answering, she says that plaintiff's petition does not state facts sufficient to constitute a cause of action or to entitle him to any relief as against this defendant, and that said petition is without equity.

And having fully answered, she prays that the injunction granted herein against her be dissolved; that the plaintiff's petition be dismissed, and that she have judgment for her damages sustained by reason of the granting of the injunction herein, as well as for costs and expenses herein incurred.

THOS. B. CHILDERS,
Attorney for Defendant Standish.

294 In the Circuit Court of St. Louis Co., in the State of Missouri.
December Term, 1875.

RICHARD H. PORTER, Plaintiff,
vs.
MILDRED STANDISH and RICHARD H. MUSSER, Defendants.

Now comes the above-named defendant, Richard H. Musser, and for his separate answer to the plaintiff's petition filed herein, says he has not knowledge or information sufficient to form a belief as to whether the plaintiff was, on the 8th day of May, 1874, engaged in business of prosecuting claims before the public departments of the United States Government as an attorney-in-fact and agent or not. He admits that at the date aforesaid, his co-defendant, Mildred Standish, had pending before the joint commission created and then sitting under and in pursuance of the treaty made betweenthe United States and the Republic of Mexico, duly ratified and in force on the fourth day of July, A. D. 1868, and subsequently extended, a certain claim against the Republic of Mexico for the murder and robbery of Austin M. Standish, late husband of said Mildred, but he denies that said Mildred desired to procure the services and means of the plaintiff in and about the prosecution and allowance of said claim. He denies that said Mildred needed the services or means of said plain-

tiff, or that plaintiff possessed any means with which to aid said Mildred in the prosecution of and in obtaining an allowance of her said claim.

This defendant has not knowledge or information sufficient to form a belief as to whether on the 8th day of May, 1874, a certain agreement in writing and filed with plaintiff's petition, was made and entered into by and between the plaintiff and said Mildred, whereby it was contracted and agreed that plaintiff should be and thereby was employed and empowered to prosecute the claim of said Mildred before said joint commission in her behalf, as widow and executrix of said Austin M. Standish, deceased, and as guardian of her minor children, and that plaintiff should pay all expenses of said prosecution, and as a compensation for said services should receive one-half of the net proceeds of said claim after deducting the expenses of said prosecution or not; nor has this defendant sufficient knowledge or information to form a belief as to whether in pursuance of such agreement said Mildred Standish on said date executed and acknowledged and delivered her power of attorney in writing as filed with plaintiff's petition, and thereby made and constituted plaintiff her true and lawful attorney irrevocable for and in her name, place, and stead to prosecute her said claim or no, nor as to whether or not any such agreement and power of attorney were by said Mildred delivered to the plaintiff.

But this defendant utterly denies that plaintiff in all or in any respects fully complied with and performed on his part said pretended agreement; and he denies that said plaintiff paid all or any part of the expenses of the prosecution of said claim before said joint commission.

And he denies that said plaintiff rendered all or any of the services required by or specified in said pretended agreement, or that were necessary in the premises.

295 And this defendant denies that said plaintiff necessarily paid or incurred in and about the prosecution of said claim large costs and expenses, amounting in the aggregate to any sum; or that he necessarily incurred or paid in and about the prosecution of said claim.

This defendant admits that under the proceedings had before said commission, and the umpire provided for in said treaty in regard to said claim, the several amounts stated in plaintiff's petition were allowed and awarded to said Mildred and her minor children, but he denies that either the services or money or other means of the plaintiff in any manner contributed to or caused the making of said award or allowance. This defendant admits that neither under the orders and negotiations of the Treasury Department of the United States, now in force, nor under the provision of said pretended agreement and power of attorney, can the plaintiff collect and receive any part of said award or allowance; and that the same is payable to said Mildred Standish, and to her minor children, or to their assigns or legal representatives, under powers duly and legally made subsequent to the date of said award or allowance. This defendant utterly denies that he and his co-defendant, said Mildred Standish,

have combined and confederated together to defraud the plaintiff out of his pretended one-half share and interest in the amount of said award, and his pretended costs and expenses by him paid and incurred, or any other sum; this defendant will collect and receive the amount of said award pretended to be due and payable to the plaintiff, and will appropriate the same to the use of this defendant.

This defendant denies that each of the defendants herein named are wholly insolvent, and that an action at law against them, or either of them, would be wholly unavailing in the premises.

And he denies that if said defendants, or either of them, shall receive such award the plaintiff will be irreparably injured and without adequate remedy, or that he will be injured at all.

This defendant denies that in pursuance of any fraudulent collusion with his co-defendant Standish he gives out and pretends that he is, and that plaintiff is not, entitled to receive one-half of the amount of said award for services rendered in and about the prosecution of said claim, and to collect and receive the same from the Treasury of the United States, and says it is not true that in pursuance of any fraudulent collusion with his co-defendant Standish he threatens that he will obtain and receive the same for his own use by means of authority now executed or to be executed by his said co-defendant Standish to him for that purpose; and he denies that he will by means of authority execute or to be executed to him by his co-defendant Standish in pursuance of any fraudulent collusion for that purpose, obtain and receive and appropriate the same to his own use, if not restrained by this honorable court.

This defendant says it is true that he does pretend that said plaintiff is not entitled to receive one-half of the amount of said award for his services rendered in and about the prosecution of said claim, and that the plaintiff is not entitled to collect the same from the Treasury of the United States; but he says it is not true that
296 he has so pretended or so pretends now by reason of any fraudulent collusion with his co-defendant Standish, or any other person.

This defendant denies all fraud or fraudulent collusion with his co-defendant, Standish, or with any other person, to defraud the plaintiff out of his pretended one-half share or interest in the amount of said award, or out of his pretended costs and expenses by him paid and incurred in and about said claim, or out of any sum, claim, or interest whatever.

And this defendant, further answering, denies that the said plaintiff, under and by virtue of his pretended agreement with said defendant Standish, is legally or equitably entitled to receive from the United States Treasury, when the same shall be disbursed by authority of law, the amount of one-half of the net proceeds of said award and the amount of his pretended expenses, or any other amount, part, or share thereof.

And he denies for that purpose said plaintiff is entitled to have and receive written authority from said defendant Standish, executed since the date of said award in accordance with the requirements of the Treasury Department.

This defendant says it is not true that he is not legally and equitably entitled to a share and interest in said award, as is alleged by plaintiff; nor is it true that said plaintiff is legally or equitably entitled to any share or interest therein by virtue of said pretended agreement, or by reason of any services rendered, or pretended to have been rendered, by him in and about the prosecution of said claim, or by reason of any costs and expenses paid, or pretended to have been paid, or incurred by him in and about the prosecution thereof, or any other account whatever.

And he further says even if said pretended agreement was binding and obligatory on his co-defendant, Standish, which he denies, still this defendant being no party thereto or in any manner interested therein, such agreement would not authorize or furnish this honorable court with any legal right to interfere with any agreement or arrangement entered into with this defendant by said defendant Standish, or with the execution of any paper or authority by said defendant Standish necessary and proper in carrying out such agreement and in compensating this defendant for services rendered in the prosecution of said claim in pursuance of any such agreement.

This defendant respectfully submits that this honorable court cannot legally enjoin or restrain his co-defendant, Standish, from executing and delivering to this defendant any paper or authority necessary and proper in the execution of such agreement or arrangement and for compensating this defendant for services rendered in the prosecution of said claim, or from receiving and receipting for said claim herself; nor can this honorable court legally enjoin this defendant from receiving or from using such authority from his co-defendant, Standish, which may be necessary and proper to enable him to collect and receive any part of or interest in said award to which he may be legally entitled by reason of any such agreement or for services rendered by him in the prosecution of said claim, or cancel or annul any such agreement.

297 For further defence to plaintiff's action, this defendant says there is a defect in parties defendant, in this: that Richard Adolphus Standish, Austin Davey Standish, and Monroe Parsons Standish, minor children, and heirs-at-law of the defendant, Mildred Standish, and the said deceased Austin M. Standish, are necessary and proper parties to a complete determination of this action, they being interested in as joint owners of said award with said defendant, Mildred Standish, and the same having been in part made in their favor as the heirs-at-law and representatives of said Austin M. Standish, deceased, as will more fully appear from said treaty, and said award, to which reference is here made.

This defendant, further answering, says said plaintiff's petition does not state facts sufficient to constitute a cause of action and to entitle plaintiff to any relief as against this defendant; that said petition is without equity; and, having fully answered, he prays that the injunction granted herein against him be dissolved, that plaintiff's petition be dismissed, and that this defendant have judgment for

his damages sustained by reason of the said injunction and restraining order, as well as for his costs and expenses herein incurred.

THOS. B. CHILDERS,
Att'y for Def't Musser.

Filed Nov. 1st., 1875.

In the Circuit Court of St. Louis County, Mo.

RICHARD H. PORTER

vs.

MILDRED STANDISH and RICHARD H. MUSSER.

The plaintiff, for reply to new matter set up in the separate answer to defendant, Mildred Standish, denies the same, and each and every separate allegation thereof, as if the same were hereby specifically traversed.

DAVIS, THOROUGHMEN & WARREN,
Pl'ff's Att'ys.

Filed March 7th, 1876.

Reply to Ans. of Musser.

In the Circuit Court of St. Louis County, Mo.

RICHARD H. PORTER

vs.

MILDRED STANDISH and RICHARD H. MUSSER.

The plaintiff, for reply to new matter in the separate answer for defendant Musser, denies the same, and each and every material allegation, as fully as if the same were hereby specifically desired.

DAVIS, THOROUGHMEN & WARREN,
Pl'ff's Att'ys.

Filed March 7th, 1876.

298 *Judgment.*

THURSDAY, *June 1st*, 1876.

April Term, 1876.

RICHARD H. PORTER

v.

MILDRED STANDISH and RICHARD H. MUSSER.

Now at this day came said parties, by their respective attorneys, and this cause coming on for hearing said parties submit this cause to the court upon the evidence and proof adduced, and the court having heard the same, and being fully advised thereof, finds the issues herein joined between the two parties herein in favor of the defendants; it is therefore ordered, adjudged, and decreed by the court that the injunction granted herein on the 12th day of October, A. D. 1875, be dissolved, and that the plaintiff take nothing by his suit in this behalf, but that his bill be dismissed, and that the de-

fendants go hereof without day, and recover of the plaintiff their costs and charges herein expended, and have execution therefor.

STATE OF MISSOURI, *County of St. Louis:*

I, J. Fred. Thornton, clerk of the circuit court of St. Louis county, certify the foregoing to be true, full, and complete transcript of the petition, order of injunction, sheriff's return thereon, separate answers of Standish and Musser, and the separate replies thereto, and final judgment in the above-entitled cause, as fully as the same remain of record and on file in my office.

In testimony whereof I hereto set my hand and affix the seal of said court, at office, in the city of St. Louis, this 9th day of March, A. D. 1877.

[SEAL.] J. FRED. THORNTON, *Clerk.*

STATE OF MISSOURI, *County of St. Louis:*

I, James J. Lindley, presiding judge of the eighth judicial circuit of the State of Missouri, which circuit is composed of the county aforesaid, certify that J. Fred. Thornton, whose signature appears to the foregoing certificate, is, and was at the time of signing the same, clerk of the circuit court of St. Louis county, and that the said attestation is in due form.

Given under my hand, this twenty-first day of September, 1877.

JAMES J. LINDLEY,
Presiding Judge of the Eighth Judicial Circuit of the State of Missouri.

STATE OF MISSOURI, *County of St. Louis,* } *ss:*

I, J. Fred. Thornton, clerk of the circuit court within and for the county of St. Louis, certify that James J. Lindley is presiding judge of the eighth judicial circuit, duly commissioned and qualified.

299 In testimony whereof I hereunto set my hand and affix seal of said county, at office in the city of St. Louis, this twenty-first day of September, eighteen hundred and seventy-seven.

J. FRED. THORNTON, *Clerk.*

J. A. C. 2.

UNITED STATES OF AMERICA, DEPARTMENT OF STATE.

To all to whom these presents shall come, Greeting:

I certify that the papers hereto annexed are true copies from the files of this Department.

In testimony whereof, I, William M. Evarts, Secretary of State of the United States, have hereunto subscribed my name and caused the seal of the Department of State to be affixed.

Done at the city of Washington, this 19th day of February, A. D. 1880, and of the Independence of the United States of America the one hundred and fourth.

[SEAL.] WM. M. EVARTS.

Know all men by these presents, that whereas, on the 12th day of March, A. D. 1874, S. Kearney Parsons, of Jefferson City, Missouri, did execute a certain power of attorney of that date, whereby Richard H. Porter was authorized and empowered by letters irrevocable to prosecute a claim of said Parsons against the Republic of Mexico before the Joint Commission of the United States of America and the Republic of Mexico, which said power is hereto attached and for reference made a part hereof as A, and which contained a full power of substitution; and whereas on the same day said Parsons and said Porter made their certain contract signed by each of them, whereby it was agreed that in consideration of the services which said Porter agreed to render and of the expenses of prosecution of said claims which he agreed to pay—that he should be by the said Parsons employed to prosecute said claim and to receive one-half of the net proceeds of said claim as compensation therefor, which sum the said Parsons thereby agreed to pay, as will fully appear by reference to the original contract, which is attached hereto and for reference made B; and whereas such proceedings were had in said cause that November 25th, 1875, judgment was rendered by the umpire in said cause in favor of said claimants against the Republic of Mexico for the sum of fifty thousand five hundred dollars, with interest on the five hundred dollars from August 15th, 1865, payable in gold, as will fully appear by reference to a transcript of the judgment in said cause, which is hereto attached and for reference marked C; and whereas the said Porter is desirous of assigning all his interest in the premises and of substituting Stephen V. White, of New York city, as attorney-in-fact to receive, collect, and receipt for all the said moneys as the same may become payable: Now, therefore, this instrument witnesseth that I, the said Richard H. Porter, by virtue of the power in me vested under and by virtue of the said power of attorney referred to herein as A, have made, constituted, substituted, and appointed the said Stephen V. White, of New York, the true and lawful attorney-in-fact, irrevocable, of the said S. Kearney Parsons, to do and perform all and every lawful act in the further prosecution, receipt, and collection of said claim which I, the said Richard H. Porter, might lawfully do in the premises if personally present, with full power of substitution,
300 hereby ratifying and confirming every such lawful act as he, the said attorney, may rightfully do in the premises.

And I, the said Richard H. Porter, in consideration of the premises, and of fifteen thousand dollars to me in hand paid at or before the ensealing or delivery of these presents, the receipt whereof is hereby acknowledged, have sold, assigned, transferred, and set over, and by these presents do sell, assign, transfer, and set over unto the said Stephen V. White all my right, title, and interest in said award, and any or all sums of money or other benefit or advantage that may be had or obtained by me by reason of said award, and by the said agreement or power of attorney of the said S. K. Parsons; and I do hereby covenant to and with the said Stephen V. White, his executors, administrators, or assigns, that my interest in said award under the agreement aforementioned is fully one-half the

face thereof and more, and that I have not received and will not receive any payment, and have not done and will not do anything to hinder the said Stephen V. White from collecting or realizing the same.

In witness whereof I have hereunto set my hand and seal this 20th day of September, 1876.

[SEAL.] R. H. PORTER.

In presence of—
JONATHAN BROWELL.
G. H. GIDDINGS.

STATE OF NEW YORK, } ss.:
City and County of New York, }

On this 20th day of September, A. D. 1876, personally appeared before me Richard H. Porter, to me personally known, and known to me to be the individual described in and who executed the foregoing instrument, and he acknowledged to me that he executed the same as his act and deed and for the purposes therein mentioned. He also acknowledged that he executed the said instrument as the attorney-in-fact for the said S. K. Parsons, and as for the act and deed of the said S. K. Parsons, and he acknowledged to me that he executed said instrument for said S. K. Parsons as his act and deed, and as his attorney in fact, and for the purposes therein mentioned.

In witness whereof, I have hereunto set my hand and affixed my official seal this 20th day of Sept., 1876.

GILBERT SMITH,
Notary Public (268), *N. Y. County.*

Know all men by these presents that whereas, on the 8th day of May, 1874, Mildred Standish, widow and relict and executrix of Austin M. Standish, deceased, and guardian of Richard Adolphus Standish, Austin D'Arcy Standish and Munrow Parsons Standish, infant heirs of Austin M. Standish, of the county of Cole, State of Missouri, did execute a certain power of attorney of that date whereby Richard H. Porter was authorized and empowered by letters irrevocable to prosecute a claim of said Mildred Standish, in her own right and as such executrix and guardian, against the Republic of Mexico, before the joint commission of the United States of America and the Republic of Mexico, which said power is
301 hereto attached, and for reference made a part hereof as "A," and which contained a full power of substitution; and whereas, on the same day, said Mildred Standish, in her own right, and as executrix and guardian aforesaid, and said Porter, made their certain contract, signed by each of them, whereby it was agreed that, in consideration of the services which said Porter agreed to render, and of the expenses of prosecution of said claim which he agreed to pay, that he should be, by the said Mildred Standish, in her own right and as executrix and guardian as aforesaid, employed to prosecute said claim, and to receive one-half of the net proceeds of said claim as compensation therefor, which sum the said Mildred

Standish, in her own right and as executrix and guardian aforesaid, thereby agreed to pay, as will fully appear by reference to the original contract, which is attached hereto, and for reference made "B;" and whereas such proceedings were had in said cause that on March 12, 1875, judgment was rendered by the umpire in said cause in favor of said claimants against the Republic of Mexico for the sum of forty-one thousand five hundred dollars, with interest on fifteen hundred dollars from August 15, 1865, payable in gold, as will fully appear by reference to a transcript of the judgment in said cause, which is hereto attached, and for reference marked "C;" and whereas said R. H. Porter did make large disbursements, and rendered services to said Mildred Standish, acting in her own behalf and as executrix and guardian aforesaid, the reasonable value of which was fifty per centum of such amount as might be and was recovered in the premises, as will fully appear by the affidavit of said R. H. Porter, which is hereto attached, made a part hereof, and for reference marked "D;"

And whereas the said Porter is desirous of assigning all his interest in the premises, and of substituting Stephen V. White, of New York city, as attorney-in-fact, to receive, collect, and receipt for all said moneys as the same may become payable:

Now, therefore, this instrument witnesseth, that I, the said Richard H. Porter, by virtue of the power in me vested, under and by virtue of said power of attorney, referred to herein as "A," have made, constituted, substituted, and appointed the said Stephen V. White, of New York city, the true and lawful attorney-in-fact, irrevocable, of the said Mildred Standish, in her own right and as executrix and guardian aforesaid, to do and perform all and every lawful act in the further prosecution, receipt, and collection of said claim which I, the said Richard H. Porter, might lawfully do in the premises if personally present, with full power of substitution, hereby ratifying and confirming every such lawful act as he, the said attorney, may rightfully do in the premises.

And I, the said Richard H. Porter, in consideration of the premises, and of the twelve thousand five hundred dollars to me in hand paid, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, have sold, assigned, transferred, and set over, and by these presents do sell, assign, transfer, and set over unto the said Stephen V. White, all my right, title, and interest in said award, and any or all sums of money or other benefit or advantage that may be had or obtained by me by reason of said award, and by the said agreement or power of attorney of the said Mildred Standish, in her own right and as executrix and guardian aforesaid.

302 And I do hereby covenant to and with the said Stephen V. White, his executors, administrators or assigns, that my interest in the said award under the agreement aforementioned is fully one-half the face thereof and more, and that I have not received and will not receive any payment, and have not done and will not do anything to hinder the said Stephen V. White from collecting or realizing the same.

In witness whereof, I have hereunto set my hand and seal this 14th day of June, 1877.

RICHARD H. PORTER. [SEAL.]

In presence of—
CLINTON McCARTY.
WM. B. KERLIN, JR.

STATE OF KENTUCKY,
County *of Louisville, County of Jefferson,* } ss:

On this 15th day of June, A. D. 1877, personally appeared before me, a notary public within and for said county and State, Richard H. Porter, to me personally known, and known to me to be the individual described in and who executed the foregoing instrument, and he acknowledged to me that he executed the same as his act deed, and for the purposes mentioned; he also acknowledged that he executed the said instrument as the attorney-in-fact for the said Mildred Standish, in her own right and as executrix and guardian, and as and for the act and deed for the said Mildred Standish, in her own right and as executrix and guardian, and he acknowledged to me that he executed said instrument in her own right and as executrix and guardian, as her act and deed, and as her attorney-in-fact, and for the purposes therein mentioned,

In witness whereof, I have hereunto set my hand and affixed my official seal, this fifteenth day of June, 1877.

[SEAL.] CLINTON McCARTY,
Notary Public, Jefferson Co., Ky.

STATE OF KENTUCKY,
County of Jefferson, } ss:

Richard H. Porter, being duly sworn, doth on his oath, depose and says: That in the claim of Mildred Standish *vs.* Mexico, he acted as attorney-in-fact for Mildred Standish, in her own right and as executrix of Austin D. Standish, deceased, and guardian of Richard Adolphus Standish, Austin D'Arcy Standish, and Monroe Parsons Standish, minor children of said Austin M. Standish.

That he prepared as such attorney the said cause for trial and at his own expense retained counsel and paid out and expended large sums of money in the premises.

That he was largely occupied in prosecuting various claims against Mexico before said commission of the same character with this, and knew of others who were in the same business, and that his services were reasonably with the contract price of one-half the sum to be obtained on said claim, and that said sum is justly due him and unpaid.

RICHARD H. PORTER.

Subscribed and sworn to before the undersigned, notary public within and for said county and State, on this 15th day of June, A. D. 1877.

[SEAL.] CLINTON McCARTY,
Notary Public, Jefferson County, Ky.

303 J. A. C., 3.

UNITED STATES OF AMERICA, DEPARTMENT OF STATE.

To all to whom these presents shall come, Greeting:

I certify that the document hereunto annexed is a true copy from the records of this Department.

In testimony whereof, I, William M. Evarts, Secretary of State of the United States, have hereunto subscribed my name and caused the seal of the Department of State to be affixed.

Done at the city of Washington, this 3d day of May, A. D. 1880, and of the Independence of the United States of America the one hundred and fourth.

[SEAL.] WM. M. EVARTS.

Docket of Claims of Citizens of the United States U. S. and Mexican Commission under Convention of 1868.

R. H. Musser.
Pike & Johnson.

385. Mildred Standish.
(439) (91)

Murder and robbery of husband on the road between Monterey and Camargo, 1865. Am't claimed $110,000.00.

1869, Dec.	16.	Referred.
1870, May	24.	Printed mem'l filed.
" Nov.	1.	Ent'd on "Notice Docket" under order July 13, 1870.
1871, Mar.	13.	Opening br'f and ev. for cl'm't filed by Mr. Ashton.
" "	27.	Def't's ev. filed by Mr. Cushing.
1872, "	1.	Reb. evidence " Ashton in office.
" "	30.	Br'f for cl'm't filed by Mr Ashton in office.
" Apr.	1.	Reb. ev'e filed by Mr. Ashton in office.
1873, Oct.	30.	Addl. ev.
" Nov.	13.	Mo. to dismiss or for a time fixed for filing defensive ev. filed by Mr. Airla.
1874, Apl.	23.	Reb. ev. off'd by ag't U. S. (C. A. V.)
1874, June	9.	Difference of opinion announced and case referred to Umpire.
" "		Op'n Comm'r Wadsworth recorded vol. III, fol. 202.
" "		Op'n Comm'r Zamacona " " fol. 205.
" "	10.	Br'f and def. ev. off'd by ag't Mexico. (C. A. V.)
" "	10.	Br'f for clm't off'd by ag't U. S. (C. A. V.)
" "	10.	Reb. evidence off'd by ag't U. S. (C. A. V.)
" "	23.	Arg't for cl'm before umpire filed by ag't U. S.
" "	27.	Br'f and def't ev. of ag't Mx. ordered by comm'rs to be filed in No. 397.
" "	27.	Br'f for cl'm't refused by comm'rs.
" Aug.	8.	Ag't before Umpire filed by ag't Mexico.
" Oct.	3.	Reb. ev. off'd April 23d and June 10th, '74, refused by comm'rs.

304 1875, May 19. Award by umpire $40,000.00 without interest, and $1,500.00 with int. at 67 cts. from Aug. 15, 1865, to date of final award; all in Mexican gold. Decision recorded vol. IV, fol. 607.

R. H. Musser. Elizah Stout, adm'r of Aaron Conrow, dec'd.
Pike & Johnson.

392. Murder and robbery of A. Conrow on the road between Monterey and Camargo, 1865. Am't claimed, $110,000.00.

1869, Dec. 28. Referred.
1870, May 24. Printed mem'l filed.
" July 13. Mo. to dismiss filed.
" Sept. 23. Petition of Elizah Stout, adm'r of Aaron Conrow, filed, and mo. of Mr. Ashton in pursuance granted.
" Nov. 1. Ent'd on notice docket, under order July 13, '70.
1871, Mar. 13. Opening br'f and evidence for cl'm't filed by Mr. Ashton.
" Mar. 27. Def. ev. filed by Mr. Cushing.
1872, Mar. 1. Reb. ev. filed by Mr. Ashton in office.
" " 30. Br'f for cl'm't filed by Mr. Ashton in office.
" April 1. Reb. ev. filed by Mr. Ashton in office.
1873, Oct. 30. Add'l evidence filed by U. S.
1873, Nov. 13. Mo. filed by Mr. Airla to dis. or for time to file def't ev.
1874, Ap'l 23. Reb. evidence off'd by ag't U. S. (C. A. V.)
1874, June 9. Difference of opinion announced and case referred to umpire.
" " Opinion of Commissioner Wadsworth, recorded vol. III, fol. 206.
Op'n Comm'r Zamacona, vol. III, fol. 206.
1874, June 10. Br'f and def't ev. off'd by Mexico. (C. A. V.)
1874, June 23. Arg't for cl'm't before umpire filed by ag't U. S.
1874, June 27. Br'f and def't ev. and agt. Mexico filed by order of comm'rs in No. 397.
" " 10. Br'f for cl'm't off'd by ag't U. S. (C. A. V.)
" " 10. Rev. ev. off'd by ag't U. S. (C. A. V.)
" " 27. Br'f for cl'm't refused by comm'rs.
" Aug. 8. Arg't of ag't Mex. before umpire filed.
1875, May 19. Award by umpire $50,000, without int., and $300 with interest at 6 per cent. from Aug. 15th, '55, to final award. All in Mex'n gold. Decision recorded vol. IV, fol. 699.

Mussser and Peugh. S. Kearney Parsons, by J. L. Smith, guardian.
Pike and Johnson.

397. Murder and robbery of claimant's father 1865. Am't claimed $110,000.

1870, Jan'y 5. Referred.
" May 24. Printed mem'l filed.
1870, Dec. 31. Add'l ev. filed.
" " 31. " brief of Musser and Peugh filed.
" " 31. Entered on "Notice Docket."
1871, Mar. 13. Opening br'f for cl'm't and add'l ev. filed by Mr. Ashton.
" " 27. Deft. ev. filed by Mr. Cushing.
1872, " 1. Reb. " " Ashton in office.
" Mar. 30. Br'f for claimant filed by Mr. Ashton in office.
" Ap'l. 1. Reb. ev. filed by Mr. Ashton in office.
1873, Oct. 30. Add'l ev. " " "
" Nov. 13. Mo. filed by Mr. Airla to dis. or for time to file ad'l def. ev.
305 1874, Ap'l 23. Rebutting evidences off'd by agt. U. S. (C. A. V.)
1874, June 10. Br'f & def. ev. off'd by ag't Mexico. (C. A. V.)
" " 27. " " " " " filed by leave.
" " 10. Br'f for cl'm't off'd by ag't U. S. (C. A. V.)
" " 10. Reb. ev. off'd by ag't U. S. (C. A. V.)
" " 27. Br'f for claimant filed by leave.
1874, Oct. 3. Reb. ev. (off'd Ap'l 21 and June 10, '74) refused.
1875, Ap'l 2. Diff. in op'n announced and case referred to umpire.
" " 2. Op'n Com'r Wadsworth, Vol. IV, fol. 508.
1875, Ap'l 2. Op'n Com'r Zamacona, Vol. IV, fol. 508.
" May 3. Arg't of ag't U. S. & Mex. before umpire filed.
1875, Nov. 29. Award by umpire $50,000 in Mexican gold, without interest; and also in Mexican gold $500 with*out* interest, at 6 per cent. from Aug. 15, 1865, to the date of the final award. Decision, Vol. VII, fol. 429.

J. A. C. No. 4.

EXHIBIT J. A. C. No. 4.

UNITED STATES OF AMERICA, DEPARTMENT OF STATE.

To all to whom these presents shall come, Greeting:

I certify that the papers hereto annexed are true copies from the records and files of this Department.

In testimony whereof, I, William M. Evarts, Secretary of State of the United States, have hereunto subscribed my name and caused the seal of the Department of State to be affixed.

Done at the city of Washington, this 27th day of April, A. D. 1880, and of the Independence of the United States of America the one hundred and fourth.

[SEAL.] WM. M. EVARTS.

Know all men by these presents, that Mary Ann Conrow, widow and relict and executrix of Aaron A. Conrow, deceased, and guar-

dian of ———, have made, constituted, and appointed, and do by these presents make, constitute, and appoint, Richard H. Musser, of the city and county of St. Louis, and State of Missouri, my true and lawful attorney and agent for me in my name, room, and stead, and in behalf of my said children and wards, to prosecute and solicit before the Joint Commission of the United States of America and the Republic of Mexico certain claims held by me and my said children, and my said agent and attorney in fact is authorized and empowered to prosecute in my name and solicit for the allowance of said claim in every particular do and perform such acts as I could or would do if myself personally present; to receipt for money, pay all expenses, and make such compromises and negotiations relating thereto as in his judgment he may deem best.

And my said agent and attorney-in-fact is further hereby fully authorized and empowered to make, constitute, and appoint by substitution such other agents or attorneys-in-fact as to him may seem proper, who shall have by reason and under the said appoint-
306 ment full power and authority to the extent hereinabove granted to act for me. This power is hereby declared to be irrevocable and coupled with an interest.

Hereby ratifying and confirming all and singular the acts and deeds of this my said agent and attorney-in-fact, I have hereunto set my hand and seal, this 10th day of December, 1869, A. D.

MARY ANN CONROW. [SEAL.]

STATE OF MISSOURI, }
County of Ray, } *ss:*

Be it remembered that Mary Ann Conrow, widow of the late Aaron H. Conrow, deceased, who is personally known to the undersigned, justice of the peace within and for the county aforesaid, to be the person whose name is subscribed to the foregoing instrument or power of attorney, and acknowledged that she executed and delivered the same as her act and deed, for the uses and purposes therein specified.

Given under my hand, this 10th day of December, A. D. 1869.

(Signed) DAVID A. QUIESENBERRY, *J. P.*

ST. LOUIS, *July 4th*, 1870.

Richard H. Porter is substituted and authorized to act under the powers hereinabove given.

R. H. MUSSER.

WASHINGTON CITY, D. C., *May* 17, 1872.

The original instrument of writing or power of attorney now before me having been carefully read and compared with the foregoing, I certify the same to be a true and genuine copy thereof.

[SEAL.] C. E. RITTENHOUSE,
Notary Public.

Know all men by these presents that I, Mildred Standish, widow

and relict and executrix of Austin M. Standish, deceased, and guardian of Richard Adolphus Standish [and] Austin D'Arcy Standish, have made, constituted, and appointed, and by these presents make, constitute, and appoint, Richard A. Musser, of the city and county of Saint Louis, State of Missouri, my true and lawful attorney-in-fact, an agent for me and in my name, room, and stead, and on behalf of my said children and wards, to prosecute and solicit before the Joint Commission of the United States of America and the Republic of Mexico certain claims held by me and my said children, and my said agent and attorney-in-fact is authorized and empowered to prosecute in my name and solicit for the allowance of said claim, [and] in every particular do and perform such acts as I could or would do if myself personally present; to receipt for money, pay all expenses, and make such commissions and negotiations relating thereto as in [his] judgment he may deem best.

And my agent and attorney-in-fact is further hereby fully authorized and empowered to make, constitute, and appoint by substitution such other agents and attorneys-in-fact as to him may seem proper, who shall have, by reason and under the said appointment, full power and authority to the extent hereinabove granted to act for me.

307 This power is hereby declared to be irrevocable and coupled with an interest.

Hereby ratifying and confirming all and singular acts and deeds of this, my said agent and attorney-in-fact, I have hereunto set my hand and seal, this — day of ——, A. D. 1869.

[SEAL.] MILDRED STANDISH.

STATE OF MISSOURI, } *sct:*
Cole County, }

Be it remembered that Mildred Standish, personally known to me, a notary public for the county aforesaid, to be the person whose name is signed to the foregoing instrument of writing as a party thereto, personally appeared before me and acknowledged the same to be her act and deed for the purpose therein mentioned.

In testimony whereof, I hereunto set my hand and notarial seal, this 4th day of December, 1869.

[SEAL.] P. T. MILLER,
Notary Public.

SAINT LOUIS, MO., *July 4th*, 1870.

Richard H. Porter is authorized to act and substitute under the powers hereinabove given.

R. H. MUSSER.

Op'n Comm'r Wadsworth in Standish Case.

MILDRED STANDISH
vs.
MEXICO. } No. 385.

The commissioners having differed in opinion in this case Mr. Comm'r Wadsworth delivered the following opinion:

On the evening of the 15th of August, 1865, on the road from Monterey to Camargo and Matamoras, M. M. Parsons, Austin M. Standish, Aaron H. Conrow, and their servant, "Dutch Bill," were attacked by a body of Mexican soldiers, overpowered, robbed, and murdered. Their bodies were stripped but never afterwards found.

I think it evident from the evidence in the three cases (No. 385, 392, 397) that the troops were liberals, and that the officers in command were Dario Garza and Planton Sanchez.

At the date of the murder Sanchez was private secretary to Canales, they say a position equivalent to adjutant.

The Mexican authorities produce here the evidence of Generals Escobedo, Trevino, &c., to show that they did not know Sanchez to belong to the army of the North before 1867, but they fail to produce the evidence of Canales, the only party who could certainly inform us whether Sanchez was his private secretary in August, 1865, a fact Escobedo was not likely to know. But the absence of the evidence of Canales is a circumstance of some importance, besides Dario Garza was the officer who made the attack and participated in the murders; Sanchez came up in time to divide the plunder and certainly afterwards had the watch of Parson's. (Siler's dep'n.)

That the murders were committed at the time and place specified admits of no doubt. Clarke and his party were near by and proceeded to the place of the struggle and found significant marks of the resistance of the brave men whom only numbers could overpower. Clarke also appealed to Escobedo at the time and gave him information
308 of the horrible crime. It does not appear that that officer then made any effort to find, arrest, and punish the guilty. I am perfectly certain he could have done so with little trouble and much credit to himself; for it appears from the testimony of Martin Von Merrick, civil engineer, &c., that he traveled part of the fatal journey with Parsons, Standish, and Conrow, and saw some of the murderers in "China," with the horse, coat, pistol, &c., of Parsons and heard them boasting how they had killed him and his companions. The "alcalde," (this is the functionary who takes testimony for the commission) of "China," also told Mr. Merrick that Jesus Sijinira had a box of engineer's instruments which he had taken from the foreigners, no doubt belonging to the husband of claimant, who was a civil engineer.

Mr. Merrick mentions the names of two of the murderers, Jesus Sijinira and Nicholas Alonez, and says the deed was done by liberal troops. General Escobedo then could have found the officers and soldiers who disgraced his army, who carried on their persons the watches of the unfortunate men.

So also Mr. Benton Lathrop states that on the 18th of August,

1865, he saw Jesus Sijirina with some of the clothing of the murdered men, which he offered to sell to Dr. Geo. B. Warder; and some months afterwards the same witness became acquainted with Nicholas Alanez a lieutenant in the command of Dario Garza, who showed him a pistol which had belonged to Parsons, whom he and his men had attacked and killed.

Mr. Duffy gives us the statements of Jesus Sijinira in full. His captain was Dario Garza, and Planton Sanchez his colonel, and these with their troops did the robbery and murder.

Mr. Siler, whose respectability is unquestionable, informs us that Sanchez confessed the deed and justified it on the ground that Parsons and his companions were spies of the Imperialists. He also showed Siler the watch of Parsons.

I think if a government will keep such officers and soldiers in its pay and employment and make no effort to discover or punish their monstrous crime, even when they wear the effects of their victims before the eyes of their superiors, why that it should be held responsible for their conduct.

Canales knew all about this heroic feat of arms, and Escabedo had an opportunity to know it and should have investigated the matter for the sake of his own honor.

It is my opinion that the Government of Mexico should now be required to indemnify the widow and orphans of Standish. He was a highly respectable and useful man, and the poor wife and children have sustained an irreparable injury by this wicked murder. I do not deem it advisable to name a sum proper in this case as it must go to the umpire, but I invite attention to the proof of qualifications and standing of claimant's husband.

The agent of the U. S. has moved for leave to file the affidavit of a U. S. officer sustaining the proof already in that Canales troops committed the murders.

This offer to file awaits the umpire's ruling in the case of Chas. E. Morton, No. 895.

309 *Op'n Comm'r Zamacona in Standish Case.*

SARAH MILDRED STANDISH
vs.
MEXICO.
No. 385, A. D.

The commissioners having differed in opinion in this case, Mr. Commissioner Zamacona delivered the following opinion:

Two circumstances inspire me with an unfavorable opinion with regard to this claim:

1st. I find the *alibi* or that in Spanish practice we term "la Cuartado" with regard to the individual accused of the murder, the origin of the claim to be proven.

2d. That although the facts referred to had occurred as the claimants states, I do not find certain well known circumstances to be established without which crimes of the common order committed by a public employee do not compromise the responsibility of his government.

I cannot do better than apply to this case the sound principles contained in the report recently submitted to the Congress of the United States, fixing the rules for the admission of claims.

The additional evidence by which it has been attempted to strengthen the primitive claim in fact modifying and extending the imputation with regard to the murder to other persons has judicially no great weight, both by its nature and on account of the circumstances under which it was produced. There is nothing in it showing that in this case there was on the part of the Mexican Government that knowledge of the facts and deliberate and indolent neglect which might produce responsibility for private crimes on the part of the public authorities. My opinion therefore is, this claim should be dismissed.

Umpire's Decision in Norton vs. Mexico.

C. E. NORTON *vs.* MEXICO. } No. 895, A. D.

The commissioners having differed in opinion upon the motion of the agent of Mexico for leave to file defensive evidence in this case, and referred to the umpire for decision, the umpire rendered the following decision:

With reference to the case of C. E. Norton *vs.* Mexico, No. 895, and the order of the commission of June 9th, 1874, requesting the umpire's decision whether the agent of Mexico should be allowed to file the proofs offered by him on the 23d of December, 1873, the umpire is of opinion that the said proofs ought not to be admitted. He considers that to admit them would both be unjust and inexpedient.

The presentation of these proofs was a violation of the rules not only without good cause but without any cause shown. It was a violation by the Government of Mexico of the rules, to the framing of which the commissioner who represented it contributed.

If this violation of the rules be allowed to their framers, how would it be possible in common justice to forbid a similar violation to the claimants who had nothing to do with making the rules?

If the evidence be admitted in the present case, the claimant must be allowed to procure rebutting testimony, and there is no just reason why he should not be allowed the same term as was employed by the defendant to procure his proofs. The adoption of such a principle would render the settlement of the claims within
310 the prescribed term impracticable. The umpire therefore decides that the proofs offered by the agent of Mexico in the above case on the 23d of December, 1873, cannot be admitted.

Washington, June 15th, 1874.

This case having been referred to the umpire for his decision upon a difference of opinion between the commissioners, the umpire rendered the following decision:

In the case of Mildred Standish *vs.* Mexico, No. 385, the claim

arises out of the killing of the claimant's husband as is alleged by Mexican troops, as he was peaceably traveling from Monterey to Matamoras, in the Republic of Mexico.

It seems to the umpire to be well proved that the said husband, by name Austin M. Standish, was at the time a naturalized citizen of the United States.

The testimony as to the killing is conflicting, but after a careful examination of all the evidence in this important case, the umpire is forced into the conviction that Standish, Parsons, Conrow, and their servant, Dutch Bill, were traveling alone, and were not accompanied by any escort of Imperialist troops, as has been suggested by the agent of Mexico, and that they were attacked and killed by Mexican soldiers acting under the orders of Mexican officers.

The indications are very strong that it was Colonel Sanchez who gave the order for the attack upon the travelers in question; but whether it was he gave it or not, the umpire is convinced that the acts were committed by the order of a Mexican officer or Mexican officers. It is not at all impossible that this officer, or these officers, were under the impression that the party belonged to the Imperialist's forces, and therefore the acts may not have been so criminal except so far as they were due to the failure previously to discover the real character of the party attacked. But these acts have been committed, whether with evil intentions or not, by Mexican soldiers under the direction of Mexican officers, the umpire is of opinion that the families of the victims ought to be compensated by the Mexican Government for the loss which they have sustained.

It is shown that Standish was able to earn about $2,500 per annum by his profession; as he was young, these earnings would probably have increased rather than diminished in after years. The umpire is of opinion that Standish's family should receive such a compensation as would, at an annual interest of 6 per cent., insure them nearly $2,500 per annum, besides the value of whatever Standish may have had with him at the time of his being killed. There is some uncertainty with regard to this amount, but the umpire believes from the evidence and from the nature of the case that including money, horse, equipments, and firearms the value must have reached at least $1,500.

The umpire therefore awards that there be paid on account of the above-mentioned claim the sum of forty thousand Mexican gold dollars ($40,000), without interest, and the further sum of fifteen hundred Mexican dollars (1,500), with interest at six per cent. per annum from the 15th of August, 1865, to the date of the final award of the commission.

Washington, March 12th, 1875.

311 At an examination held before me, an examiner in chancery, beginning on the 31st day of March, and ending April 5th, 1880, the within-named witness, Richard H. Porter, was produced in his own behalf, in rebuttal, and after being sworn, the within deposition was written down by me from the statements made

by the said witness, and read to him and by him signed in my presence.

Mr. Johnson appeared for def't Porter, Mr. Pike for complainant, Mr. Ingle for def't Winder, Mr. Peugh p. p., Mr. DeWees for def't Rittenhouse, and Mr. Th. Jessup Miller for def't McManus.

JNO. A. CLARKE, *Examiner.*

In the Supreme Court of the District of Columbia.

CHILES *vs.* PORTER *et al.* } 6703. Eq. Doc. 20.

MARCH 31st, 1880.

Met pursuant to notice. Present: Mr. Johnson for def't Porter, and Mr. Ingle for def't Winder, and Mr. Pike for complainant, Mr. Peugh p. p., Mr. DeWees for def't Rittenhouse, and counsel for def't McManus.

Whereupon RICHARD H. PORTER, a witness of lawful age, produced on behalf of def't Porter, in rebuttal, being sworn, says:

Examined by Mr. JOHNSON:

Q. Did you ever have any conversation with Charles E. Rittenhouse, one of the defendants in this case, relating to McManus procuring affidavits to be used in the cases in question? If so, state when it was and what was said.

A. I am sure that I never had any conversation with Mr. Rittenhouse about McManus, nor his getting testimony in those Mexican claims. I am certain Mr. Rittenhouse never heard me say anything about it. It is a phantom of his own imagination, and must have heard it from McManus himself, for I haven't had a friendly conversation with Mr. Rittenhouse since March, 1874.

Q. Can you state whether or not the affidavits procured by McManus, to be used in these cases as evidence, were ever received and filed either by the commission or umpire? State what you know on that subject.

A. I know they were not. I took them to Mr. Ashton, who was then the attorney on part of the Government, and he refused to let them be filed—that the commission had already made a rule that no more testimony should be received. He refused most positively to file them and advised me not to attempt to have anything to do with them; that they could be of no benefit to my cases, stating that it would be treating the commission with disrespect if I filed them.

Q. Rittenhouse says that he paid some part of the expenses here in Washington connected with these cases. Can you say whether he or Peugh ever paid any expenses connected with these cases?

A. Neither one of them ever paid expenses that I know of. In February, 1870, I borrowed $300 from Rittenhouse and Peugh, more particularly Rittenhouse, and gave my note for it—it being entirely a loan—some time in 1872. I paid off the note and took it up. I don't know what became of the note. I may be able to find the note among some of my papers.

312 Q. Did that $300 which you borrowed from Rittenhouse form any consideration for the purchase from you of any interest in the Parsons, Conrow, and Standish claims or in the Hamilton claim before the Southern Claims Commission?

A. Not a particle. I gave a note for that.

Q. State how it was you did make a contract with Rittenhouse and Peugh concerning the Conrow, Parsons, and Standish claims and whether or not you ever saw Peugh before entering into that contract and what Rittenhouse was to do under said contract.

A. I met with Rittenhouse and talked to him about the business. He suggested that Peugh would be a good man to go into the matter, but my principal arrangement was with Rittenhouse.

Q. Did you about that time have the Hamilton claim for prosecution before the Southern Claims Commission?

A. I did not.

Q. When did you get the Hamilton claim?

A. It was in the fall of 1870 or 1871.

Q. Did you at any time give Rittenhouse an interest in that claim? If so, what was it?

A. In the fall of 1870 or '71 I made an arrangement with Rittenhouse to go South and get claims; he was to prosecute them and be at all expenses and we were to divide the fees. I got the Hamilton claim and took a power of attorney in the name of Rittenhouse and Porter, also a contract in same names to be at all expenses—that is Rittenhouse was to be—at Washington city in the prosecution of claims.

Q. Did Rittenhouse bear any of the expenses of the Hamilton claim? If not, who did?

A. He did not bear one cent of it. I was at all the expense in connection with the claim, paying witnesses and everything connected with that claim.

Q. Tell us how Rittenhouse come to assign or transfer his interest in the Hamilton claim to you?

A. March, 1872. I wanted him to pay his part of the expenses in the Hamilton matter, which was several hundred dollars then; not being able to do so, he sold me his interest which he had wanted to do in these Mexican claims, Conrow, Parsons, and Standish, for the amount of money he owed me for the advances I had made in the Hamilton case, and reassigned to me all of his right, interest, &c., in those Mexican claims. I, at that time, had advanced over $1,000 in the Hamilton case.

Q. Have you ever sold your interest in the Hamilton claim to a man named Black, for $500?

A. I have not, nor to any one else; nor would I have sold it for $10,000.

Q. Mr. Rittenhouse has testified that he employed Charles H. Winder to perform all necessary services in these cases. State what, if anything, you know about the contract between Rittenhouse and Winder, and how it was that you employed Winder?

A. He told me that he had been employed by those gentlemen to prosecute these claims. This was in 1871 or early in 1872. I think

now, on reflection, it was in the fall of 1871. He was work-
313 ing at the papers and said to me that he had been employed by those gentlemen, but that if I did not make myself responsible that he would not prosecute the cases. Some time early in 1872 I received a notice from the Department that all that was to be done to the cases should be done by the 1st of April. I urged him to go on and prosecute the cases and that I would be responsible. At last he declined positively to go on with the cases, unless I would contract with him to prosecute the claims myself. The time was short and no one else knew as much about the cases as he did, that I contracted with him to prosecute the cases to the end, in which he made some three, four, or five arguments with my assistance. Two were printed and the others written.

Q. What was the necessity of those arguments?

A. The circumstance of a man being whipped in South America, he being a British subject, and they demanding $50,000 damages, and I thought it a good opportunity to draw the umpire's attention to that fact.

Q. Rittenhouse has testified that in selling to you his interest in these claims he did not intend to sell Mr. Peugh's interest. What have you to say about that?

A. He did sell me the entire interest, and said nothing about reserving Mr. Peugh's interest. I dealt with him as though they both were present. Neither one ever performed the services they agreed to at that time, nor made any advances. I had been to all the trouble and expenses myself. They proved to be of no advantage in the world to me. I found every time I went away and returned that they had neglected the business, and I had to superintend the matter; that they proved themselves wholly incompetent to do what they had undertaken to do. I therefore determined to get rid of them, and paid them for what they already had done, and the money they loaned me.

By Mr. PIKE, of counsel for complainant:

Q. State the date when you employed Winder as near as you can.

A. I can't state the date I employed him. It must have been in January, 1872. My employment of him was separate and distinct from Rittenhouse and Peugh's employment of him. I did not assume in this employment any arrangement that they made with Winder. From my employment of Winder my connection with Rittenhouse and Peugh ceased. They had virtually abandoned the prosecution of these cases. All Rittenhouse ever did in these cases was to write and receive a few letters and turn them over to Peugh, who would run a few times to the State Department.

R. H. PORTER.

Sworn to and subscribed before me, this 31st day of March, A. D. 1880.

JNO. A CLARK, *Examiner.*

Adj'd to Friday, Apr. 2, '80, at 3 o'clock p. m.

APRIL 2D, 1880.

Met pursuant to adjournment.

Present: Mr. Johnson for def't Porter, and Mr. Ingle for def't Winder. Owing to absence of witnesses the hearing was adjourned to Monday, April 5th, 1880, at 2 o'clock p. m.

314 APRIL 5TH, 1880.

Met pursuant to adjournment.

Present: Counsel for defendant Porter and for defendant Winder. Whereupon—

Mr. Johnson, for defendant Porter, announced the testimony closed on behalf of Porter.

JNO. A. CLARKE, *Examiner.*

In the Supreme Court of the District of Columbia.

MACMANUS *vs.* PORTER *et al.* } Equity. No. 6382.

CHILES *vs.* SAME. } Equity. No. 6703.

WINDER *vs.* SAME. } Equity. No. 7011.

These causes coming on to be heard before the court in special term, and having been partially heard and argued before the conclusion of the argument, it is this 24th day of May, 1880, ordered by the court that these causes be certified to the general term of this court for hearing in the first instance.

By the court: D. K. CARTTER, *Ch. Justice.*

Supreme Court of the District of Columbia.

Filed January 17, 1881.

THOMAS P. MACMANUS, Plaintiff, *vs.* MILDRED STANDISH *et al.*, Defendants. } No. 6382. In Equity.

Stephen V. White, one of the defendants herein, now comes and files this his plea *puis darrein continuance* in bar of the complainant's action. This defendant, saving all exceptions to the manifold errors and uncertainties in complainant's bill contained, says that said complainant ought not to further maintain his action.

For that since the last continuance herein the Hon. Wm. M. Evarts, Secretary of State of the United States, did, on Dec. 2d, A. D. 1880, as defendant is informed and believes and so avers, decide that the complainant McManus was not entitled to receive any portion of said awards in the causes of Parsons against Mexico, Standish

against Mexico, and Conrow against Mexico. That by the act of Congress approved June 18, 1878, the Secretary of State was clothed with *quasi* judicial functions in respect to said awards as this defendant believes, and so defendant says that the rights of complainant have, since the last continuance of this cause, been decided adverse to said complainant by an officer of the Government charged with the duty of determining complainant's rights therein,
315 which decision is final and beyond the power of any other tribunal to reverse, and defendant pleads and relies upon said decision as a bar to any recovery by complainant in this cause, and prays to be hence discharged with his costs.

S. V. WHITE, *Pro se.*

I, Stephen V. White, do solemnly swear that I have read the plea by me subscribed, and know the contents thereof, and that the facts therein stated upon my personal knowledge are true, and that the facts therein stated upon information and belief I believe to be true.

S. V. WHITE.

Sworn to and subscribed before me this 17th day of January, A. D. 1881.

R. J. MEIGS, *Clerk*,
By R. J. MEIGS, JR.,
Assistant Clerk.

I, Stephen V. White, counselor of the Supreme Court of the United States, appearing herein in my own behalf, do state on oath and do on my professional honor certify that the foregoing plea is not filed for delay, and that the plea as pleaded is in my judgment well founded in law, and is a bar to complainant's right of recovery herein, and is true in fact.

S. V. WHITE, *Pro se.*

Subscribed and sworn before me Jan. 17, 1881.

R. J. MEIGS, *Clerk*,
By R. J. MEIGS, JR., *Assistant.*

Leave to file this plea is refused this 24th day January, A. D. 1881.

By the court: D. K. CARTTER,
Chief Justice.

316 THOMAS P. MCMANUS *vs.* MILDRED STANDISH. } 6382. Equity.

JOHN CHILES *vs.* RICHARD H. PORTER. } 6703. Equity.

CHARLES H. WINDER *vs.* MILDRED STANDISH. } 7011. Equity.

These causes coming on to be heard upon the motion by the de-

fendants Porter and White to dismiss the same for want of jurisdiction, and having been argued *pro* and *con* by Messrs. White and Southard, Miller, Peck, Ingle, Henkle, and Pike, and thereon considered by the court, it is ordered that said motion be, and hereby is, denied, and the hearing of the causes on their merits be, and is, fixed for February 14, 1881.

By the court : D. K. CARTTER,
Ch. Justice.

In the Supreme Court of the District of Columbia, the 15th day of February, A. D. 1881.

THOMAS P. MACMANUS
v.
STEPHEN V. WHITE *et al.* } No. 6382. Eq.

The complainant joins issue with the defendant's answers.

M. I. SOUTHALL.
JESUP MILLER, *P. Q.*

Ordered this 15th day of Feb'y, A. D. 1881, that leave be granted to file the above replication, and that it be taken as filed before the taking of the testimony.

By order of the court : D. K. CARTTER,
Ch. Justice.

317

THOMAS P. MACMANUS
vs.
STANDISH *et al.* } Eq. 6382.

SAM'L A. PEUGH
vs.
STANDISH *et al.* } Cross-Bill. Eq. 6382.

CHAS. H. WINDER
vs.
STANDISH *et al.* } Eq. 7011.

JOHN CHILES
vs.
RICH'D H. PORTER. } Eq. 6703.

In this case it is stipulated that the decree *pro confesso* as to defendant S. V. White be set aside, and that the issues tendered in the answer of defendant White in the suit 6382 (MacManus *vs.* Standish) may be taken as the issue raised and controverted in all the cases so far as said White is concerned.

And it is further stipulated that copies of any original papers on file in the Department of State may be offered in evidence as
317½ if the execution of such originals were proven by deposition

of a competent witness, subject to all objections as to competency or materiality of such exhibits upon the issues herein joined.

Dated Feb. 15, 1881.

S. V. WHITE, *Pro se.*
C. INGLE, *For C. H. Winder.*
JOHN CHILES,
By his att'ys: J. W. DENVER,
L. PIKE, &
C. F. PECK.
JESUP MILLER, *pro MacManus.*
BARTLEY & SOUTHARD,
For Peugh.

318 In the Supreme Court of the District of Columbia.

THOS. P. McMANUS
vs.
MILDRED STANDISH *et al.* } No. 6382.

CHAS. H. WINDER
vs.
S. MILDRED STANDISH *et al.* } No. 7011.

JOHN CHILES
vs.
RICH'D H. PORTER *et al.* } 6703.

EXHIBITS.

UNITED STATES OF AMERICA, DEPARTMENT OF STATE.

To all to whom these presents shall come, Greeting:

I certify that the document hereto annexed is a true copy from the files of this Department.

In testimony whereof I, William M. Evarts, Secretary of State of the United States, have hereunto subscribed my name and caused the seal of the Department of State to be affixed.

Done at the city of Washington, this 8th day of February, A. D. 1881, and of the Independence of the United States of America the 105th.

[SEAL.] WM. M. EVARTS.

Hon. W. H. EVARTS, *Secretary of State.*

SIR: Having reason to fear some misapprehension as to my rights in the Mary Ann Conrow award, I deem it proper, in addition to the facts stated in my "brief," respectfully to request your consideration of the following statement:

Mr. White, knowing that I had powers of attorney irrevocable and with interest in the Standish, Parsons, and Conrow awards, purchased my interest in the two first named, I retaining full control and interest of the Conrow award.

There was no conflict of interest between us, and none was anticipated; for if there had been, Mr. White could not have made the

purchase he did. I am now informed, however, that instead of giving me the co-operation which I expected, and had a right to expect, Mr. White has thought proper to assume an antagonistic posture by purchasing the pretended interest of Musser, who is shown to have been without interest.

Should this information be correct, the fact that Mr. White has paid money to Musser cannot give to him any right other than that which Musser held; and if Musser had no rights, then White has acquired none.

The fact that White purchased my interest in the Standish and Parsons awards, and then paid money to Musser, does not give to him in the Conrow award any interest greater than Musser held.

For five years I have prosecuted these cases, expending
319 more than ten thousand dollars, and I cannot but believe that the Honorable Secretary will decide that the laborer is worthy of his hire.

I have the honor to be, very respectfully, your obedient servant,

R. H. PORTER.

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Done at the city of Washington, this 8th day of February, A. D. 1881, and of the Independence of the United States of America the 105th.

[SEAL.] WM. M. EVARTS.

WASHINGTON, D. C., *December 23d*, 1878.

Hon. WILLIAM M. EVARTS,
Secretary of State of the United States.

SIR: We have the honor to present herewith for your consideration a paper executed in our behalf by Mrs. Mary Ann Conrow, of Richmond, Ray county, Missouri, in the matter of the award made in her favor by the late Joint American and Mexican Claims Commission, case No. 392.

We respectfully ask that this paper be duly filed with the other papers relating to said award on file in the Department of State, and that it and our claim of right under and in connection with it receive the Honorable Secretary's early and favorable consideration.

We have the honor to be, sir, very respectfully, your obedient servant,

PIKE & JOHNSTON.
R. H. MUSSER.

Before the Honorable Secretary of State of the United States of America.

In the Matter of the Payment of the Award made in favor of MARY ANN CONROW by the Joint Commission of the United States and Mexico.

Statement of Mary Ann Conrow, respectfully submitted for the consideration of the Honorable Secretary of State.

I, Mary Ann Conrow, make oath and state that I am the identical Mary Ann Conrow in whose favor an award was
320 made on the 13th day of March, A. D. 1875, by the umpire of and to the Joint Commission created under and in pursuance of the treaty made and entered into by and between the United States and Mexico on the 4th day of July, A. D. 1868, and subsequently extended.

That the claim upon which said award was made in my favor was for compensation for the robbery and murder of my husband, Aaron A. Conrow, in the Republic of Mexico, by Mexican soldiery, on or about the 16th day of August, A. D. 1865.

That at the time it became necessary for me to present my said claim to said joint commission for its consideration and adjudication, I knew not how to make the statement of my claim in formal manner, nor the course it would be necessary for me to pursue in order to make proper presentation of it, and thereafter to continue its prosecution; neither did I know by what character or amount of testimony it would be necessary for me to support my claim, nor had I knowledge of the names or whereabouts of the persons by whose testimony my said claim could be fairly sustained, nor had I the means wherewith to defray any of the expenses that I know would necessarily be incurred in the preparation, presentation, and prosecution of my said claim.

I recognized my dependence upon the aid of some person learned in the law, who possessed the knowledge and information requisite and necessary to enable him to properly prepare, present, and conduct the prosecution of my said claim before said commission, and who could and would expend the money that would have necessarily to be paid out in defraying the expenses that would be incident to said preparation, presentation, and prosecution of my said claim.

Under these circumstances, I having full confidence in the skill, ability, and integrity of Richard H. Musser, a gentleman of high professional attainments, then residing and practicing law in the city of St. Louis, State of Missouri, and he expressing his willingness to prepare, present, and prosecute my said claim to its final termination, and to defray all the expenses incident thereto, I entrusted my claim to him therefor, upon an understanding and agreement entered into by and between us, and duly reduced to writing in the form of a letter of attorney, executed and delivered by me to him, wherein I recited that I conferred upon him full power and authority to take charge of my said claim, and representing me to do each and every act requisite and necessary to be done in and about the

purchase he did. I am now informed, however, that instead of giving me the co-operation which I expected, and had a right to expect, Mr. White has thought proper to assume an antagonistic posture by purchasing the pretended interest of Musser, who is shown to have been without interest.

Should this information be correct, the fact that Mr. White has paid money to Musser cannot give to him any right other than that which Musser held; and if Musser had no rights, then White has acquired none.

The fact that White purchased my interest in the Standish and Parsons awards, and then paid money to Musser, does not give to him in the Conrow award any interest greater than Musser held.

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That the claim upon which said award was made in my favor was for compensation for the robbery and murder of my husband, Aaron A. Conrow, in the Republic of Mexico, by Mexican soldiery, on or about the 16th day of August, A. D. 1865.

That at the time it became necessary for me to present my said claim to said joint commission for its consideration and adjudication, I knew not how to make the statement of my claim in formal manner, nor the course it would be necessary for me to pursue in order to make proper presentation of it, and thereafter to continue its prosecution; neither did I know by what character or amount of testimony it would be necessary for me to support my claim, nor had I knowledge of the names or whereabouts of the persons by whose testimony my said claim could be fairly sustained, nor had I the means wherewith to defray any of the expenses that I know would necessarily be incurred in the preparation, presentation, and prosecution of my said claim.

I recognized my dependence upon the aid of some person learned in the law, who possessed the knowledge and information requisite and necessary to enable him to properly prepare, present, and conduct the prosecution of my said claim before said commission, and who could and would expend the money that would have necessarily to be paid out in defraying the expenses that would be incident to said preparation, presentation, and prosecution of my said claim.

Under these circumstances, I having full confidence in the skill, ability, and integrity of Richard H. Musser, a gentleman of high professional attainments, then residing and practicing law in the city of St. Louis, State of Missouri, and he expressing his willingness to prepare, present, and prosecute my said claim to its final termination, and to defray all the expenses incident thereto, I entrusted my claim to him therefor, upon an understanding and agreement entered into by and between us, and duly reduced to writing in the form of a letter of attorney, executed and delivered by me to him, wherein I recited that I conferred upon him full power and authority to take charge of my said claim, and representing me to do each and every act requisite and necessary to be done in and about the

preparation, presentation, and prosecution of my said claim, and that in consideration thereof, and of his defraying all the expenses that would be necessarily incident thereto, I stipulated and agreed that he should have as compensation therefor a full and equal one-half of whatever amount of money should be awarded me on my said claim.

This letter of attorney I executed and delivered to said Richard H. Musser on the 10th day of December, A. D. 1869.

321 Afterward I, at the suggestion and with the full knowledge and approval of said Richard H. Musser, I executed and delivered my letter of attorney, bearing date the 28th day of March, A. D. 1872, to the law firm of Pike and Johnson, of the city of Washington, in the District of Columbia, said firm being composed of Albert Pike, Robert W. Johnson, and Luther H. Pike, authorizing and empowering them to act as attorneys for me in the further prosecution of my said claim; my understanding and agreement with said Pike & Johnson and said Richard H. Musser being that I should not be under any obligation by reason of my employment of said Pike and Johnson to make or allow any other or further compensation for or on account of the services that should be rendered by said Pike and Johnson in and about the prosecution of my said claim than the full and equal one-half of whatever sum of money should be awarded to me on my said claim that I had originally stipulated and agreed to and with said Richard H. Musser to allow him, as I have hereinbefore stated.

That I have never executed any letter of attorney, or given any employment whatever in and about the preparation, presentation, and prosecution of my said claim to any person in the world other than to the said Richard H. Musser and said Pike and Johnson, neither have I ever recognized or acknowledged any person whomsoever other than said Richard H. Musser and said Pike and Johnson as my attorneys, or as charged with the performance of any work or duty, or clothed with any power or responsibility whatever in connection therewith, or in relation thereto, nor have I ever entered into any agreement or understanding with any person whomsoever other than said Richard H. Musser and said Pike and Johnson for allowance of any portion whatever of the money awarded me on my said claim as compensation either for duty performed, service rendered, or obligation or expense incurred in regard either to the preparation, presentation or prosecution of my said claim; nor have I ever understood or recognized any person other than said Musser and said Pike and Johnson as having any right, title, interest, or claim in or to any portion thereof, or any account whatsoever, or as having any right or claim against me, either for service rendered, work done, or expense or obligation incurred for, or on account of, or in connection with the preparation, presentation of my said claim.

That from the moment I entrusted my said claim to said Richard H. Musser, as I have hereinbefore stated, I have corresponded exclusively with said Richard H. Musser and said Pike and Johnson in regard to its preparation, presentation, and prosecution, and subsequent to the making of said award in regard to the payment thereof.

That to the best of my knowledge, information, and belief all the expenses incurred in the preparation, presentation, and prosecution of my said claim have been borne by said Richard H. Musser and by said Pike and Johnson; that all the proof on which my said claims was tried and adjudged was procured by said Richard H. Musser, and, in fact, that it is solely to the industry, fidelity, skill, and ability of said Richard H. Musser and said Pike and Johnson that the allowance of said award in my favor can be justly attributed

322 That it is my belief, based both upon my personal knowledge and upon information I have received, that said Richard H. Musser and said Pike and Johnson have faithfully carried out the stipulations of the contracts they entered into with me. I know that the expenditures of time, labor, and money has resulted in an award entirely satisfactory to me, and I recognize them as justly entitled to have and receive under their said contract with me an equal one-half of the money awarded to me on my said claim, as fairly and fully earned by the attention given by them to the preparation, presentation, and prosecution of my said claim, and by and through the expenses they have borne in connection therewith.

I further state that I have had personal knowledge that one Richard H. Porter has claimed to be my attorney in and about the preparation, presentation, and prosecution of said claim before said joint commission; that he prepared said claim for the first time, so far as I had knowledge or information, in the year A. D. 18—, with covert thereto that if I should not recognize him as my attorney, accede to his demand, and intrust to him the prosecution of my said claim, he would act in hostility to me and would defeat my claim.

That he based his said claim to be my attorney on the assertion that he had employed said Richard H. Musser as his agent to obtain from me my letter of attorney to him, Porter, authorizing and empowering him as such to prepare, present, and prosecute my said claim before said joint commission; and that said Richard H. Musser had perpetrated a fraud on him, Porter, when he, the said Richard H. Musser, took my said letter of attorney and contract to himself instead of to him, Porter; and upon this other assertion, that he, Porter, had a valid assignment to himself from said Richard H. Musser of the letter of attorney and contract I had originally executed and delivered to said Richard H. Musser, as I have hereinbefore stated, whereby the said Richard H. Musser had substituted him, Porter, in place and stead of him, the said Richard H. Musser, as my attorney in and about the prosecution of my said claim before said joint commission, to every intent and purpose whatever, and to each and every the right of said Richard H. Musser under my said contract with him.

That at the time I executed and delivered to said Richard H. Musser my letter of attorney and contract, as I have hereinbefore stated, I had neither knowledge nor information of the existence of said Richard H. Porter. It was only said Richard H. Musser that I then thereby intended to constitute my attorney; it was for his services that I contracted, and it was only in consideration of his

services and the expenses he should defray that I contemplated or agreed that he should have the full and equal one-half of the money to be awarded me on said claim. I had then no knowledge, information, or belief that I was contracting for the services of said Richard H. Porter, or for allowing him, in consideration thereof, any portion of, or right, title, claim, or interest in or to the money that should be awarded me on said claim.

323 That the said Richard H. Musser duly advised me that he claimed that said Richard H. Porter had, without his consent or knowledge, and in a surreptitious and illegal manner, obtained possession of the original letter of attorney and contract I had so executed and delivered to him.

That being so advised by said Richard H. Musser, I promptly and positively refused to recognize said Richard H. Porter as my attorney, and to have correspondence with him as such attorney or otherwise, in regard to the prosecution of my said claim, and I have ever continuously and consistently, up to this present time, refused to recognize said Richard H. Porter as my attorney, and have had no correspondence with him, or with any one claiming under him in regard to my said claim, and I do not now recognize him or any one claiming under him as my attorney, or as having any claim against me or my full and equal one-half of the money awarded me on my said claim for, or any account whatever.

I further stating that inasmuch as my contract was originally with said Richard H. Musser, and as I declined from as early a day as the 15th day of March, A. D. 1872, to recognize said Richard H. Porter as my attorney, as also to enter into any contract or agreement with him, that, therefore, if said Porter or any one claiming by, through, or under him has any claim or right in the premises, it has been, and is, against said Richard H. Musser and not against me; and that inasmuch as the said Porter and any and every one claiming by, through, or under him has had the most ample time and opportunity to have long since established, by judicial proceedings, the existence and validity of any valid claim or right existing either against me or said Richard H. Musser, and inasmuch as said Porter and any one claiming by, through, or under him, has wholly failed to avail himself of such time and opportunity, respectfully submit for the consideration of the Honorable Secretary, as follows, that is to say:

1st. Whether I or my said attorneys, Richard H. Musser and said Pike and Johnson, should be now hindered or delayed in the receipt or enjoyment of our respective portions of the money now in the custody of the Honorable Secretary, and to be paid out by him in pursuance of the act of Congress approved June 18th, 1878, for and on account of the award so made in my favor on my said claim by reason of any adverse or hostile claim preferred by said Richard H. Porter, or by any one else claiming by, through, or under him.

2d. Whether it is not consistent both with law and equity, that I and my said attorneys be immediately paid by the Honorable Secretary our respective portions of said money now in his custody, and that said Porter and any one claiming by, through, or under

him be remitted to his suit at law, or in equity, as he may be advised, for the establishment of any claim he may prefer in the premises.

And hereupon I submit this, my respectful request, to the Honorable Secretary of State, to wit:

324 That he divide, or cause to be divided, the said sum of money into three parts, one for one-half and two for each one-fourth said sum, and that he draw or cause to be drawn and issued in my favor separate draft or warrant on and for each such part; that he thereupon mail, or cause to be mailed, direct to me at my post-office address, Richmond, Ray county, Missouri, the draft or warrant drawn and issued on and for said one-half part of said money; that he mail, or cause to be mailed, direct to my said attorney, Richard H. Musser, at his post-office address, Brunswick, Chariton county, Missouri, one of said drafts or warrants drawn and issued on and for one of said one-fourth parts of said sum of money; and that he mail, or cause to be mailed, direct to my said attorneys, Pike and Johnson, at their post-office address, No. 602 D street N. W., Washington, District of Columbia, the other one of said drafts or warrants drawn and issued on and for the other one of said fourth parts of said sum of money.

Witness my hand and seal at Richmond, Ray county, Missouri, this 19th day of December, A. D. 1878.

MARY A. CONROW. [SEAL.]

Signed and sealed in the presence of—

1. D. A. QUESENBERRY.
2. WM. S. CONROW.

STATE OF MISSOURI, }
County of Ray, } *set:*

Be it known that on this 19th day of December, in the year of our Lord one thousand eight hundred and seventy-eight, before me, A. A. McCuistion, clerk of the county court, a court of record, in and for said county and State, personally appeared Mary A. Conrow, to me well known to be the individual person who executed the foregoing statement, and acknowledged the same to be her free act and deed. I have no interest, present or prospective, in the sum of money named in the said statement.

In testimony whereof, I have hereunto set my hand and affixed my seal of office, the day and year last above written.

[SEAL.] A. A. McCUISTION,
Clerk County Court.

Witnesses:

——— ———.
——— ———.

UNITED STATES OF AMERICA, DEPARTMENT OF STATE.

To all to whom these presents shall come, Greeting:

I certify that the documents hereto annexed are true copies from the files of this Department.

In testimony whereof, I, William M. Evarts, Secretary of State of the United States, have hereunto subscribed my name and caused the seal of the Department of State to be affixed.

325 Done at the city of Washington this 8th day of February, A. D. 1881, and of the Independence of the United States of America the 105th.

[SEAL.] WM. M. EVARTS.

ALBERT PIKE, ROB'T W. JOHNSON, LUTHER H. PIKE.
OFFICE OF PIKE AND JOHNSON,
Attorneys and Solicitors of the Supreme Court, Court of Claims, Courts of the District of Columbia, the General Land Office, and Departments.

WASHINGTON, D. C., *November 8th*, 1877.

Hon. WILLIAM M. EVARTS, *Secretary of State.*

SIR: We have the honor to present herewith for your consideration certain papers, which we respectfully request may be placed on file in your Department with other papers there on file in the cases of Sarah Milred Standish, Mary Ann Conrow, and Stephen Kearney Parsons, respectively, 385, 392, and 397, before the late United States and Mexico Claims Commission.

The papers so herewith presented are as follows:

For Mrs. Standish's Case, No. 385.

1st. Letter of attorney from Sarah M. Standish to Robert W. Johnson, of date the nineteenth day of March, A. D. 1872.

2d. Assignment from Sarah M. Standish to Albert Pike, Robert W. Johnson, and Luther H. Pike, partners under the firm name of Pike & Johnson, of date the thirtieth day of April, A. D. 1875, of and for one-fourth of the award made in her favor by Sir Edward Thornton, the umpire, in the above-named Claims Commission.

3d. Assignment from Sarah M. Standish to Richard H. Musser, of date the thirtieth day of April, A. D. 1875, of and for one-fourth of the award made in her favor by the above-named umpire to said Claims Commission.

For Mrs. Conrow's Case, No. 392.

1st. Letter of attorney from Mary Ann Conrow to R. W. Johnson and Pike, of the law firm of Pike & Johnson, of date the twenty-eighth day of March, A. D. 1872.

2. Letter of attorney from David H. Conrow to R. W. Johnson and Pike, of the law firm of Pike & Johnson, of date the twenty-eighth day of March, A. D. 1872.

For S. K. Parson's Case, No. 397.

1st. Letter of attorney from Stephen K. Parsons to Robert W. Johnson, Albert Pike, and Luther H. Pike, partners, under firm name of Pike & Johnson, of date the 8th day of July, A. D. 1874.

326 We have the honor to be, very respectfully, your ob't servants,

PIKE & JOHNSON,
602 "*D*" *street N. W.*

Know all men by these presents, that I, Sarah M. Standish, guardian and curator of Richard A. Standish, Austin D. Standish, and Monroe P. Standish, of the county of Cole, in the State of Missouri, have made, constituted, and appointed, and by these presents do make, constitute, and appoint Robert W. Johnson, in the city of Washington, District of Columbia, my true and lawful attorney, irrevocable for me, and in my name, place, and stead to prosecute a certain claim against the Government of Mexico, for indemnity for the murder and robbery of my husband, Austin M. Standish, in Mexico, on or about the 15th day of August, A. D. 1865, by military authority of Mexico, amounting to ———, more or less, before any of the courts of the United States, and upon appeal to the Supreme Court of the United States, or before any of the departments of the Government, or before the Congress of the United States, or before any officer or commission or convention specially authorized to take cognizance of said claim, or through any diplomatic negotiations, and to collect the same; and from time to time furnish any further evidence necessary and proper for the successful prosecution of my said claim, giving and granting to my said attorney full power and authority to do and perform all and every act and thing whatever requisite and necessary to be done in and about the premises as fully to all intents and purposes as I might or could do if personally present at the doing thereof, with full power of substitution and revocation, and to receipt and sign all vouchers and bonds of indemnity or appeal, and to endorse all drafts and vouchers in my name, either by or without indicating that it is done by procuration, which may be requisite in the prosecution or collection of said claim, hereby ratifying and confirming all that my said attorney or his substitute may or shall lawfully do or cause to be done by virtue hereof, revoking prior power of attorney executed by me in this behalf. The compensation of said attorney being contingent upon the payment or adjustment of said claim, this power of attorney is intended to include the protection of their interest as per agreement of this date and is enrevocable.

In witness whereof, I hereunto set my hand and seal, this 19th day of March, eighteen hundred and seventy-two.

SARAH M. STANDISH,
Guardian and Curator of Richard A. Standish,
Austin D. Standish, and Monroe P. Standish.

Two witnesses:
T. M. WINSTON, JR.
W. BOLTON.

327 STATE OF MISSOURI, }
County of Cole, } ss:

Be it know- that on the 20th day of March, in the year eighteen hundred and seventy-two, before me, the undersigned, clerk of the county court in and for said county and State, personally appeared Sarah M. Standish, to me well known to be the identical person who executed the foregoing letter of attorney, and the same having been first read over to her and the contents thereof explained, acknowledged the same to be her act and deed. I have no interest, present or prospective, in the claim.

In testimony whereof, I have hereunto set my hand and affixed my seal of office the day and year last above written.

[SEAL.] W. H. LUSK, *Clerk.*

Know all men by these presents that whereas we, Mildred Standish, widow of Austin M. Standish, and guardian of Richard Adolphus Standish, Austin Darcy Standish, and Monroe Parsons Standish, her minor children, of the town of Jefferson City, in the county of Cole, in the State of Missouri, did, on the twelfth day of March, A. D. 1875, recover by the determination and award of the umpire of the Mixed Commission on Mexican and American Claims under the treaty of the 4th day of July, A. D. 1868, and subsequently extended, against the Government of Mexico, the sum of forty thousand Mexican gold dollars ($40,000), without interest, and the further sum of fifteen hundred Mexican gold dollars ($1,500), with interest at six per cent. per annum from the 15th of August, 1865, to the date of the final award of the commission, to be paid in gold by the Government of Mexico to the Government of the United States of America, in respect of that certain claim, the same being No. 385, which we, the said Mildred Standish, for herself, and as guardian of her minor children, heirs of Austin M. Standish, dec'd, held against the said Government of Mexico, and which was by us submitted to said commission for adjudication under and by virtue of the provisions of the said treaty, and as subsequently extended, and in reference to which said award was made, as by the record of said commission will more fully appear:

Now we, the said Mildred Standish, for herself, and as guardian of her said minor children, heirs of Austin M. Standish, dec'd, for and in consideration of the professional services rendered in our behalf in and about the preparation and prosecution of said claims before said commission by Albert Pike, Robert W. Johnson, and Luther H. Pike, of the city of Washington, in the District of Columbia, attorneys-at-law, and partners, under the firm name and style of Pike & Johnson, have sold, assigned, transferred, and set over, and by these presents do sell, assign, transfer, and set over, unto the said Albert Pike, Robert W. Johnson, and Luther H. Pike, as such partners, all our right, title, claim, and interest in and to twenty-five per centum of the aggregate amount due to us on, by, or under said award, that being the amount stipulated and agreed by us to

be paid to them by way of compensation for their professional services.

328 And we do hereby give the said Albert Pike, Robert W. Johnson, and Luther H. Pike, as such partners, full power and authority, for their own use and benefit, to ask, demand, collect, receive, and give acquittance for the sum of money due on the interest hereby sold, assigned, transferred, and set over unto them, or any part thereof; and we do hereby request the Honorable Secretary of the Treasury of the United States of America, or whomsoever may be designated to make payment of the money due on said award, to execute and deliver to the said Messrs. Pike & Johnson, at their place of business, No. 400 Sixth street N. W., in said city of Washington, unless by them otherwise requested, the proper draft or warrant in their favor for the amount of money hereby assigned and transferred to them.

In testimony whereof we hereunto set our hands and affix our seals at Jefferson City, in the county of Cole, in the State of Missouri, on this the thirtieth day of April, A. D. 1875.

Signed triplicate.

MILDRED STANDISH. [SEAL.]
MILDRED STANDISH, [SEAL.]
As Guardian for Her Children.

STATE OF MISSOURI, } ss:
County of Cole, }

Be it remembered that on this the first day of May, A. D. 1875, personally came before the undersigned, a notary public within and for the county and State aforesaid, Mrs. Mildred Standish, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument of writing, and acknowledged the same to be her act and deed for the uses and purposes therein mentioned, the said instrument being by her signed and acknowledged in triplicate.

In witness whereof I have hereunto set my hand and affixed my notarial seal this year and day first above written.

Com. dated Feb'y 12th, 1873. Qualified Mch. 1st, 1873. Com. expires Feb'y 12th, 1877.

[SEAL.] NICK E. MILLER,
Notary Public, Cole County, Mo.

329 UNITED STATES OF AMERICA, DEPARTMENT OF STATE.

To all whom these presents shall come, Greeting:

I certify that the documents hereto annexed are true copies from the files of this Department.

In testimony whereof, I, William M. Evarts, Secretary of State of the United States, have hereunto subscribed my name and caused the seal of the Department of State to be affixed.

Done at the city of Washington, this 8th day of February, A. D. 1881, and of the Independence of the United States of America the 105th.

[SEAL.] WM. M. EVARTS,
Secretary of State.

Know all men by these presents, that whereas, I, Stephen K. Parsons, of ———, in the county of Cole, and State of Missouri, have in my own right a certain claim against the Republic of Mexico, for compensation for the loss inflicted upon me by the killing of my father, the late General Mosby M. Parsons, on the 15th day of August, A. D. 1865, in the State of Nueva Leon, in said republic of Mexico, by order of the military authorities of said Republic, which was duly preferred to the Joint Commission of the United States and the said Republic of Mexico, sitting in the city of Washington, in the District of Columbia, by Jackson L. Smith, Esquire, curator of my estate, under and by authority of a certain order of the county court of the said county of Cole, and that is now before the umpire chosen by the commissioners of said Governments, on the conflicting opinions filed by said commissioners, and which I am desirous of having prosecuted to its final determination, having made, constituted, and appointed, and by these presents do make, constitute, and appoint Albert Pike, Robert W. Johnson, and Luther H. Pike, attorneys and counsellors, in the said city of Washington, and partners under the firm name of Pike & Johnson, my true and lawful attorneys, for use, and in my name, place, and stead, to take charge of and prosecute the said claim to such final determination, and in such lawful manner as they shall deem best for my interest, giving and granting to my said attorneys full power and authority to do and perform all and every act and thing whatsoever requisite and necessary to be done in and about the premises, as fully to all intents and purposes as I might or could do if personally present at the doing thereof, with full power of substitution and revocation, and hereby ratifying and confirming all that my said attorneys or their substitutes may or shall lawfully do, or cause to be done, by virtue hereof, and all that the said Robert W. Johnson has done, or caused to be done, under the powers heretofore conferred
330 on him by said curator, the said Jackson L. Smith, at the time of my minority in lieu of which powers conferred of him, the said Robert W. Johnson, this power of attorney to him and his partners, the said Albert Pike and Luther H. Pike is executed; and revoking all former powers of attorney or authorizations whatever granted by me in the premises, and in particular that power of attorney heretofore executed by me to one R. H. Porter, as the same was executed by me through mistake, improvidently, and without information of the nature and extent of the said powers conferred by my said curator on the said Robert W. Johnson, and that the same were irrevocable and coupled with an interest, and as I was persuaded by the said R. H. Porter, whose powers are hereby revoked, by deceit and misrepresentation of facts and by diligent concealment of other facts to execute the same to him but without intention or purpose on my part to do other than confirm and carry out all the contracts, acts, and duties undertaken in the premises by the said Jackson L. Smith as curator of my estate at the time of my minority.

In witness whereof, I have hereunto set my hand and seal, this eighth day of July, A. D. 1874.

STEPHEN K. PARSONS. [SEAL.]

STATE OF MISSOURI, *County of Cole:*

Be it known, that on this 8 day of July, A. D. 1874, before me, the undersigned, clerk of the county court in and for said county and State, personally appeared Stephen K. Parsons, to me well known to be the identical person who executed the foregoing letter of attorney, and the same having been first read over and the contents thereof explained to him by me, he acknowledged the same to be his free act and deed. I have no interest, present or prospective, in the claims.

In testimony whereof, I have hereunto set my hand and affixed my seal of office, the day and year last above written.

[SEAL.] W. H. LUSK, *Clerk.*

UNITED STATES OF AMERICA, DEPARTMENT OF STATE.

To whom all these presents shall come, Greeting:

I certify that the documents hereto annexed are true copies from the files of this Department.

In testimony whereof, I, William M. Evarts, Secretary of State of the United States, have hereunto subscribed my name and caused the seal of the Department of State to be affixed.

Done at the city of Washington, this 8th day of February, A. D. 1881, and of the Independence of the United States of America the 105th.

[SEAL.] W. M. EVARTS,
Secretary of State.

331 [160.] *General Power of Attorney.*

Know all men by these presents that I, Mary Ann Conrow, of the —— of ——, county of Ray, in the State of Missouri, have made, constituted, and appointed, and by these presents do make, constitute, and appoint R. W. Johnson & Pike, the law firm of Pike & Johnson, true and lawful attorneys for me, and in my name, place, and stead to prosecute before the Joint Commission of the Government of the United States and the Republic of Mexico my claim for indemnity for the murder and robbery of my husband, Aaron H. Conrow, in Mexico, on or about the 3d day of August, 1865, with full power and authority to act in my behalf in the premises, as fully as I might or could do if personally present and acting for myself; giving and granting to my said attorneys full power and authority to do and perform all and every act and thing whatsoever requisite and necessary to be done in and about the premises as fully, to all interests and purposes, as I might or could do if personally present at the doing thereof, with full power of substitution or revocation, hereby ratifying and confirming all that my said attorneys or —— substitute may or shall lawfully do, or cause to be done, by virtue hereof, hereby revoking all prior powers of attorney executed by me in this behalf.

In testimony whereof, I have *have* hereunto set my hand and seal, this 28th day of August, 1872.

MARY ANN CONROW. [SEAL.]

Witnesses:

—— ——. [SEAL.]
—— ——. [SEAL.]

STATE OF MISSOURI, }
County of ——, } *ss:*

Be it remembered that on this 28th day of March, A. D. 1872, the undersigned, clerk of the C. common pleas court within and for the county of Ray and the State of Missouri, personally came Mary A. Conrow, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument of writing, as party thereto, and acknowledged the same to be her voluntary act and deed for the uses and purposes therein mentioned.

In testimony whereof, I have hereunto set my hand and affixed my official seal, at my office in Richmond, the day and year first above written.

[SEAL.] JOHN T. QUIRK, *Clerk.*

332 Know all men by these presents, that I, David H. Conrow, of the —— of ——, county of Ray, in the State of Missouri, have made, constituted, and appointed, and by these presents do make, constitute, and appoint, R. W. Johnson & Pike, of the law firm of Johnson & Pike, true and lawful attorneys for me, and in my name, place, and stead to prosecute before the Joint Commission of the Government of the United States and the Republic of Mexico my claim for indemnity for the murder and robbery of my father, Aaron H. Conrow, in Mexico, on or about the 3d day of August, 1865, with full power and authority to act in my behalf in the premises as *I* fully as I might or could do if present and acting for myself, giving and granting to my said attorneys full power and authority to do and perform all and every act and thing whatsoever requisite and necessary to be done in and about the premises as fully to all intents and purposes as I might or could do if personally present at the doing thereof, with full power of substitution or revocation, hereby ratifying and confirming all that my said attorneys or substitute may or shall lawfully do, or cause to be done by virtue hereof, hereby revoking all other powers of attorney executed by me in this behalf to any one else.

In testimony whereof, I have hereunto set my hand and seal, this 28th day of March, 1872.

DAVID H. CONROW. [SEAL.]

Witness:

—— ——. [SEAL.]
—— ——. [SEAL.]

STATE OF MISSOURI, } ss:
County of Ray, }

Be it remembered that on this 28th day of March, A. D. 1872, the undersigned, clerk of the common pleas court within and for the county of Ray and State of Missouri, personally came David H. Conrow, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument of writing as party thereto, and acknowledged the same to be his voluntary act and deed for the uses and purposes therein mentioned.

In testimony whereof, I have hereto set my hand and affixed my official seal, at my office in Richmond, the day and year first above written.

[SEAL.] JOHN T. QUIRK, *Clerk.*

UNITED STATES OF AMERICA, DEPARTMENT OF STATE.

To all whom these presents shall come, Greeting:

I certify that the documents hereto annexed are true copies of this Department.

333 In testimony whereof, I, William M. Evarts, Secretary of State of the United States, have hereunto subscribed my name and caused the seal of the Department of State to be affixed.

Done at the city of Washington, this 8th day of February, A. D. 1881, and of the Independence of the United States of America the 105th.

WM. M. EVARTS,
Secretary of State.

S. V. WHITE, Banker, 8 Wall St.,
NEW YORK, *Feb'y 13th*, 1879.

To the Department of State, Washington, D. C.:

I have the honor to transmit herewith an original assignment of the entire interest of Richard H. Musser and Mess. Pike & Johnson in the several cases of Mary Ann Conrow *vs.* Mexico, Mildred Standish *vs.* Mexico, and S. Kearney Parsons *vs.* Mexico, numbered 382, 392, and 397.

If desirable, I will have separate assignments made in each case.

This vests the legal title in the one-half of the awards in each case to me, in any view of the controversy, as I now hold same in my own right from Richard H. Porter, if he had any title, and I also hold in my own right from Pike & Johnson and Richard H. Musser, if they had title. I hope that at an early day it may be consistent with the other duties of the Department to close the matter by payment of the moiety to me.

Very respectfully, S. V. WHITE.

Know all men by these presents, that whereas, we, the undersigned, under and by virtue of certain letters of attorney, agreements as to fees, and assignments of interests executed and delivered to us respectively by Sarah Mildred Standish, Mary Ann Conrow, Jackson

L. Smith, as curator of Stephen Kearney Parsons, and the said Stephen Kearney Parsons, in whose favor, respectively, awards were made by the umpire to the late Joint American and Mexican Claims Commission, in the cases numbered respectively 382, 392, and 397, are claimants to certain proportionate shares of said respective awards, do hereby, for and in consideration of the sum of thirty thousand dollars to us in hand paid at and before the making of these presents by Stephen V. White, of the city of New York, assign, set over, and transfer unto the said Stephen V. White all our right, title, claim,
and interest that we jointly or severally have in and to said
334 portions of said awards, and in and to and under said letters of attorney, agreements as to fees, and assignments of interest, and all original letters, papers, and documents in regard to said awards, and the making of said letters of attorney, agreement as to fees, and assignments of interests held and controlled by us jointly or severally, herewith delivered into the possession, custody, and control of the said Stephen V. White, and we jointly and severally do hereby request and authorize the Secretary of State of the United States to recognize said Stephen V. White as hereby fully substituted in our room, place, and stead, and clothed with each and every right and power possessed by us as such claimants, jointly and severally, and we do hereby agree to make at any time hereafter, upon the request of the said Stephen V. White, any and every instrument of cession, transfer, or assurance to said Stephen V. White necessary to give full effect to this assignment.

Signed at Washington city, in the District of Columbia, this the twelfth day of February, in the year of our Lord one thousand eight hundred and seventy-nine.

PIKE & JOHNSON.
RICH'D H. MUSSER.

UNITED STATES OF AMERICA, DEPARTMENT OF STATE:

To all to whom these presents shall come, Greeting:

I certify that the documents hereto annexed are true copies from the files of this Department.

In testimony whereof, I, William M. Evarts, Secretary of State of the United States, have hereunto subscribed my name and caused the seal of the Department of State to be affixed.

Done at the city of Washington, this 8th day of February, A. D. 1881, and of the Independence of the United States of America the 105th.

[SEAL.] WM. M. EVARTS.

S. V. WHITE, 8 Wall St.,
NEW YORK, *Feb'y* 21, 1877.

To the Honorable the Secretary of State of the United States, Washington, D. C.

SIR: I have the honor to transmit to your Department for the proper record therein the following papers, viz:

(1.) Certified transcript of the award of the umpire in the cause

of S. Kearney Parsons *vs.* Mexico, under the convention of 1868 between the United States and the Republic of Mexico.

(2.) Power of attorney of said Parsons to R. H. Porter to prosecute and collect said claim, with full power of substitution.

(3.) Contract of sale of one undivided half interest in said claim from said Parsons to said Porter.

(4.) Contract of sale of said undivided half interest by said Porter to me, with substitution of myself as attorney-in-fact for said Parsons.

Very respectfully, yours, S. V. WHITE.

335 Know all men by these presents:

That whereas, on the twelfth day of March, A. D. 1874, S. Kearney Parsons, of Jefferson City, Missouri, did execute a certain power of attorney of that date, whereby Richard H. Porter was authorized and empowered by letters irrevocable to prosecute a claim of said Parsons against the Republic of Mexico before the Joint Commission of the United States of America and the Republic of Mexico, which said power is hereto attached and for reference made a part hereof as A, and which continued a full power of substitution; and whereas on the same day said Parsons and said Porter made their certain contract signed by each of them, whereby it was agreed that in consideration of the services which said Porter agreed to render and of the expenses of prosecution of said claim which he agreed to pay, that he should be by the said Parsons employed to prosecute said claim and to receive one-half of the net proceeds of said claim as compensation therefor, which sum the said Parsons thereby agreed to pay, as will fully appear by reference to the original contract which is attached hereto and for reference made B; and whereas, such proceedings were had in said cause that on November 25th, 1875, judgment was rendered by the umpire in said cause in favor of said claimants against the Republic of Mexico for the sum of fifty thousand five hundred dollars, with interest on the five hundred dollars from August 15th, 1865, payable in gold, as will fully appear by reference to a transcript of the judgment in said cause which is hereto attached and for reference marked C; and whereas the said Porter is desirous of assigning all his interest in the premises and of substituting Stephen V. White, of New York city, as attorney-in-fact, to receive, collect, and receipt for all the said moneys as the same may become payable:

Now, therefore, this instrument witnesseth that I, the said Richard H. Porter, by virtue of the power in me vested under and by virtue of the said power of attorney referred to herein as A, have made, constituted, substituted, and appointed the said Stephen V. White, of New York, the true and lawful attorney-in-fact, irrevocable, of the said S. Kearney Parsons, to do and perform all and every lawful act in the further prosecution, receipt, and collection of said claim which I, the said Richard H. Porter, might lawfully do in the premises, if personally present, with full power of substitution, hereby ratifying and confirming every such lawful act as he, the said attorney, may rightfully do in the premises.

And I, the said Richard H. Porter, in consideration of the premises and of fifteen thousand dollars to me in hand paid at or before the ensealing or delivery of these presents, the receipt whereof is hereby acknowledged, have sold, assigned, transferred, and set over, and by these presents do set over unto the said Stephen V. White all my right, title, and interest in said award, and any or all sums of money or other benefit or advantage that may be had or obtained by me by reason of said award, and by the said agreement or power of attorney of the said S. K. Parsons, and I do hereby cove-
336 nant to and with the said Stephen V. White, his executors, administrators, or assigns, that my interest in said award under the agreement aforementioned is fully one-half the face thereof and more, and that I have not received and will not receive any payment, and have not done and will not do anything to hinder the said Stephen V. White from collecting or realizing the same.

In witness whereof, I have hereunto set my hand and seal, this 20th day of September, 1876.

R. H. PORTER.

In presence of—
JONATHAN BROWNELL
G. H. GIDDINGS.

STATE OF NEW YORK, *City and County of New York*, } ss.:

On this 20th day of Sept., A. D. 1876, personally appeared before me Richard H. Porter, to me personally known, and known to me to be the individual described and who executed the foregoing instrument, and he acknowledged to me that he executed the same as his act and deed and for the purposes therein mentioned; he also acknowledged that he executed the said instrument as the attorney-in-fact for the said S. K. Parsons, and as such for the act and deed of the said S. K. Parsons, and he acknowledged to me that he executed said instrument for said S. K. Parsons as his act and deed and as his attorney-in-fact, and for the purposes therein mentioned.

In witness whereof, I have hereunto set my hand and affixed my official seal, this 20th day of Sept., 1876.

[SEAL.] GILBERT SMITH,
Notary Public (268), *N. Y. County.*

Power of Attorney.

Know all men by these presents, that S. Kearney Parsons, son and heir-at-law of M. Monrow Parsons, deceased, of Jefferson City, in the State of Missouri, have made, constituted, and appointed, and by these presents do make, constitute, and appoint Richard H. Porter, of Washington city, D. C., my true and lawful attorney irrevocable for me and in my name, place, and stead, hereby annulling and revoking all former powers of attorney or authorization whatever in the premises, to prosecute before the Joint Commission of the United States of America and the Republic of Mexico, a certain claim now pending before that commission for the killing and robbing of my

father, M. Monrow Parsons, in the Republic of Mexico, and being now of lawful age to act in my own behalf, I hereby especially revoke and annul a power of attorney heretofore given to one R. H. Musser, of St. Louis. Missouri, bearing date the 20th day of December, 1869, by Jackson L. Smith, of Jefferson City, Missouri, then the curator of my estate; and I also hereby revoke and annul any and all other power of attorney which the said Jackson L. Smith may have given to any other person or persons whomsoever, and to, from time to time, furnish any further evidence necessary or that may be demanded, giving and granting to my said attorney full
337 power and authority to do and perform all and every act and thing whatsoever requisite and necessary to be done in and about the premises, as fully to all intents and purposes as I might or could do, if personally present at the doing thereof, with full power of substitution and revocation, and to receipt and sign all vouchers, hereby ratifying and confirming all that my said attorney or his substitute may or shall lawfully do or cause to be done by virtue hereof.

In witness whereof, I hereunto set my hand and seal, this twelfth day of March, eighteen hundred and seventy-four.

S. K. PARSONS. [L. S.]

(A.)

Two witnesses who can write:

F. M. WINSTON, JR.

N. CALLAN.

DISTRICT OF COLUMBIA, } ss:
County of Washington, }

Be it known that on this twelfth day of March, in the year eighteen hundred and seventy-four, before me, the undersigned, a notary public in and for said county and District, personally appeared S. K. Parsone, to me well known to be the identical person who executed the foregoing letter of attorney, and the same having been first fully read over to him, and the contents thereof duly explained, acknowledged the same to be his act and deed, and that I have no interest, present or prospective, in the claim.

In testimony whereof, I have hereunto set my hand and affixed my seal of office, the day and year last above written.

[SEAL.] N. CALLAN,
Notary Public.

This agreement, made and entered into this 12th day of March, 1874, by and between S. Kearney Parsons, son of Monrow M. Parsons, deceased, party of the first part, and Richard H. Porter, of Washington city, party of the second part, witnesseth: That it is agreed by and between the parties to this agreement, severally subscribed thereto, that the said party of the second part is employed and empowered to prosecute under the Joint Commission between the United States of America and the Republic of Mexico the claim of S. Kearney Parsons, son and heir of M. M. Parsons, deceased, against

the said Republic of Mexico. The said party of the second part is to pay all expenses and to receive half of the net proceeds of said claim after deducting the expenses of the said prosecution.

In witness whereof, we have set our hands and seals this day and year first above written.

S. K. PARSONS. [SEAL.]
R. H. PORTER. [SEAL.]

(B.)

Witness:
J. M. WINSTON, JR.
S. E. NEWGENT.

These men live—
Jefferson City, Mo.
Kansas City, Mo.

338 UNITED STATES OF AMERICA, DEPARTMENT OF STATE.

To all whom these presents shall come, Greeting:

I certify that the documents hereto annexed are true copies from the files of this Department.

In testimony whereof, I, William M. Evarts, Secretary of State of the United States, have hereunto subscribed my name and caused the seal of the Department of State to [be] affixed.

Done at the city of Washington, this 15th day of February, A. D. 1881, and of the Independance of the United States of America the 105.

[SEAL.] WM. M. EVARTS,
Secretary of State.

Know all men by these presents, that whereas, on the 8th day May, 1874, Mildred Standish, widow and relict and executrix of Austin M. Standish, deceased, and guardian of Richard Adolphus Standish, Austin D'Arcy Standish, and Monroe Parson Standish, infant heirs of Austin M. Standish, of the county of Cole, State of Missouri, did execute a certain power of attorney of that date, whereby Richard H. Porter was authorized and empowered by letters irrevocable to prosecute a claim of said Mildred Standish, in her own right and as such executrix and guardian, against the Republic of Mexico, before the Joint Commission of the United States of America and the Republic of Mexico, which said power is hereto attached, and for reference made a part hereof as "A," and which contained a full power of substitution; and whereas on the same day said Mildred Standish, in her own right and as executrix and guardian aforesaid, and said Porter made their certain contract, signed by each of them, whereby it was agreed, that in consideration of the services which said Porter agreed to render, and of the expenses of prosecution of said claim, which he agreed to pay, that he should be, by the said Mildred Standish, in her own right, and as executrix and guardian aforesaid, employed to prosecute said claim, and to receive one-half of the net proceeds of said claim as

compensation therefor, which sum the said Mildred Standish, in her own right as executrix and guardian aforesaid, thereby agreed to pay, as will fully appear by reference to the original contract which is attached hereto and for reference made "B;" and whereas such proceedings were had in said cause, that on March 12th, 1875, judgment was rendered by the umpire in said cause in favor of said claimants against the Republic of Mexico for the sum of forty-one thousand five hundred dollars, with interest on five hun-
339 dred dollars from August 15th, 1865, payable in gold, as will fully appear by reference to a transcript of the judgment in said cause, which is hereto attached, and for reference marked "C;" whereas said R. H. Porter did make large disbursements and rendered services to said Mildred Standish, acting in her own behalf and as executrix and guardian aforesaid, the reasonable value of which was fifty per centum of such amount as might be and was recovered in the premises, as will fully appear by the affidavit of said R. H. Porter, which is hereto attached, made a part hereof, and for reference marked "D;"

And whereas the said Porter is desirous of assigning all his interest in the premises, and of substituting Stephen V. White, of New York city, as attorney in fact, to receive, collect, and receipt for all said moneys as the same may become payable:

Now, therefore, this instrument witnesseth, that I, the said Richard H. Porter, by virtue of the power in me vested, under and by virtue of said power of attorney, referred to herein as "A," have made, constituted, substituted, and appointed the said Stephen White, of New York city, the true and lawful attorney in fact, irrevocable, of the said Mildred Standish, in her own right and as executrix and guardian aforesaid, to do and perform all and every lawful act in the further prosecution, receipt, and collection of said claim, which I, the said Richard H. Porter, might lawfully do in the premises if personally present, with full power of substitution, hereby ratifying and confirming every such lawful act as he, the said attorney, may rightfully do in the premises.

And I, the said Richard H. Porter, in consideration of the premises, and of twelve thousand five hundred dollars to me in hand paid, at or before the ensealing and delivering of these presents, the receipt whereof is hereby acknowledged, have sold, assigned, transferred, and set over, and by these presents do sell, assign, transfer, and set over unto the said Stephen V. White all of my right, title, and interest in said award, and any or all sums of money or other benefit or advantage that may be had or obtained by me by reason of said award, and by the said agreement or power of attorney of the said Mildred Standish in her own right, and as executrix and guardian aforesaid.

And I do hereby covenant to and with the said Stephen V. White, his executors, administrators, or assigns, that my interest in said award under the agreement aforementioned is fully one-half the face thereof, and more, and that I have not received and will not receive any payment, and have not done and will not do any-

thing to hinder the said Stephen V. White from collecting or realizing the same.

In witness whereof, I have hereunto set my hand and seal, this 14th day of June, 1877.

RICHARD H. PORTER. [SEAL.]

In presence of—
CLINTON McCLARTY.
WM. B. KERLIN, JR.

340 A.

STATE OF KENTUCKY, } ss:
City of Louisville, County of Jefferson, }

Know all men by these presents, that Mildred Standish, ex'tr'x of Austin M. Standish, deceased, of Jefferson City, in the State of Missouri, have made, constituted, and appointed, and by these presents do make, constite, and appoint, Richard H. Porter, of Washington city, D. C., my true and lawful attorney, irrevocable, for me and in my name, place, and stead, hereby annulling and revoking all former powers of attorney or authorization whatever in the premises, to prosecute for me and my children, Richard Adolphus Standish, *Aaron Dancy* Standish, a claim now before the Joint Commission of the United States and the Republic of Mexico, now sitting in the city of Washington, D. C., for the murdering and robbing of my late husband, Austin M. Standish, in the Republic of Mexico, and to, from time to time, furnish any further evidence necessary or that may be demanded, giving and granting to my said attorney full power and authority to do and perform all and every act and thing whatsoever requisite and necessary to be done in and about the premises, as fully to all intents and purposes as I might or could do if personally present at the doing thereof, with full power of substitution and revocation, and to receipt and sign all vouchers, hereby ratifying and confirming all that my said attorney or his substitute may or shall lawfully do or cause to be done by virtue hereof.

In witness whereof, I hereunto set my hand and seal, this eighth day of May, eighteen hundred and seventy-four.

MILDRED STANDISH. [SEAL.]

Two witnesses who can write:
GUS. A. HAGER.
J. E. GRIESHAMMER.

STATE OF MISSOURI, } ss:
County of Cole, }

Be it known that on this 8th day of May, in the year eighteen hundred and seventy-four, before me, the undersigned, a clerk of the county court in and for said county and State, personally appeared S. Mildred Standish, to me well known to be the identical person who executed the foregoing letter of attorney, and the same having been first fully read over to her, and the contents thereof

duly explained, acknowledged the same to be her act and deed, and that I have no interest, present or prospective, in the claim.

In testimony whereof, I have hereunto set my had and affixed my seal of office, the day and year last above written.

W. H. LUSK, *Clerk.*

Fred. K. Porter is substituted and authorized to act under the powers given to me in the within power of attorney.

R. H. PORTER.

341 Witness:
L. M. CLOSS.
CLAXTON CHERY.

(Cancelled.)

B.

This agreement made and entered into this the eighth day of May, 1874, by and between Mildred Standish, widow and relict and executrix of Austin M. Standish, deceased, and guardian of Richard Adolphus Standish, Austin D'Arcy Standish, and Monrow Parson Standish, infant heirs of Austin M. Standish, of the county of Cole and State of Missouri, party of the first part, and Richard H. Porter, of the city of Washington, D. C.:

Witnesseth that it is agreed by and between the parties to this agreement, severally subscribing thereto, that the said party of the second part is employed and empowered to prosecute under the Joint Commission between the United States of America and the Republic of Mexico the claim of the said Mildred Standish, as widow, executrix, and guardian for her children against the said Republic of Mexico.

The said party of the second part is to pay all expenses, and receive of the net proceeds of the said claim after deducting the expenses of said prosecution.

Witness our hands and seal this day and year above written.

MILDRED STANDISH. [SEAL.]
R. H. PORTER. [SEAL.]

Witness:
S. K. PARSONS.
T. M. WINSTON, JR.

For and in consideration of the sum of ——— to me paid by ——— this receipt whereof as hereby acknowledged I have transferred and assigned all my right, title, and interest to the within contract.

R. H. PORTER.

C.

Decision of the Umpire.

UNITED STATES AND MEXICAN CLAIMS COMMISSION,
WASHINGTON, D. C., *May* 19, 1875.

MILDRED STANDISH
vs.
MEXICO.
No. 385.

In the case of "Mildred Standish *vs.* Mexico," No. 385, the claim arises out of the killing of claimant's husband, as is alleged, by Mexican troops, as he was peacefully traveling from Monterey to Matamoras, in the Republic of Mexico.

It seems to the umpire to be well proved that the said husband, by name Austin M. Standish, was at the time a naturalized citizen of the United States. The testimony of the killing is con-
342 flicting, but after a careful examination of all the evidence in this important case, the umpire is forced into the conviction that Standish, Parsons, Conrow, and their servant, "Dutch Bill," were traveling alone, and were not accompanied by any escort of Imperialist troops, as has been suggested by an agent of Mexico, and that they were attacked and killed by Mexican soldiers acting under the orders of Mexican officers.

The indications are very strong that it was Colonel Sanchez who gave the order for the attack upon the travelers in question; but whether it was he who gave it or not, the umpire is convinced that the acts were committed by the ordea of a Mexican officer or Mexican officers. It is not at all impossible that this officer or these officers were under the impression that the party belonged to the Imperialist forces, and therefore the acts may not have been so criminal, except so far as they were due to the failure previously to discover the real character of the party attacked.

But these acts having been committed, whether with evil intention or not, by Mexican soldiers, under the direction of Mexican officers, the umpire is of opinion that the families of the victims ought to be compensated by the Mexican Government for the loss which they have sustained.

It is shown that Standish was able to earn about $2,500 per annum by his profession; as he was young, these earnings would probably have increased rather than diminished in after years. The umpire is of opinion that Standish's family should receive such a compensation as would at an anual interest of 6 per cent. ensure them nearly $2,500 per annum, besides the value of whatever Standish may have had with him at the time of his being killed. There is some uncertainty with regard to this amount, but the umpire believes from the evidence and from the nature of the case that, including money, horse, equipments, and fire-arms, the value must have reached at least $1,500.

The umpire, therefore, awards that there be paid on account of the above-mentioned claim the sum of forty thousand Mexican gold dollars ($40,000), without interest, and the further sum of fifteen

hundred Mexican dollars ($1,500), with interest at 6 per cent. per annum, from the 15th of August, 1865, to the date of the final award of the commission.

(Signed) EDW'D THORNTON.

Washington, March 12, 1875.

I, Randolph Coyle, secretary on the part of the United States to the United States and Mexican Claims Commission, hereby certify that the above and foregoing is a full, true, and exact copy of the decision of the umpire of the said commission in the case of Mildred Standish *vs.* Mexico, No. 385, as the same appears and remains of record in the office of the said commission.

Witness my hand (the said commission having no official seal), at the city of Washington, D. C., this 18th day of May, 1876.

RANDOLPH COYLE, *Secretary.*

343 United States of America, Department of State.

To all to whom these presents shall come, Greeting:

I certify that Randolph Coyle, whose name is subscribed to the paper hereto annexed, was at the time of subscribing the same secretary on the part of the United States to the United States and Mexican Claims Commission.

In testimony whereof, I, Hamilton Fish, Secretary of State of the United States, have hereunto subscribed my name and caused the seal of the Department of State to be affixed.

Done at the city of Washington, this 12th day of June, A. D. 1876, and of the Independence of the United States of America the one hundredth.

HAMILTON FISH.

D.

STATE OF KENTUCKY, }
County of Jefferson, } *ss:*

Richard H. Porter, being duly sworn, doth on his oath depose and say: That in the claim of Mildred Standish *vs.* Mexico he acted as attorney-in-fact for Mildred Standish, in her own right and as executrix of Austin M. Standish, deceased, and guardian of Richard Adolphus Standish, Austin D'Arcy Standish, and Munrow Parson Standish, minor children of said Austin M. Standish.

That he prepared, as such attorney, the said cause for trial, and at his own expense retained counsel and paid out and expended large sums of money in the premises.

That he was largely occupied in prosecuting various claims against Mexico before said commission of the same character with this, and knew of others who were in the same business, and that his services were reasonably worth the contract price of one-half the sum to be obtained on said claim, and that said sum is justly due him and unpaid.

RICHARD H. PORTER.

Subscribed and sworn to before the undersigned, notary public within and for said county and State, on the 15th day of June, A. D. 1877.

[SEAL.] CLINLON McCLARTY,
Notary Public, Jefferson County, Ky.

On this 15th day of June, A. D. 1877, personally appeared before me, a notary public within and for said county and State, Richard H. Porter, to me personally known, and known to me to be [the] individual described in and who executed the foregoing instrument, and he acknowledged to me that he executed the same as his act and deed and for the purposes therein mentioned; he also acknowledged that he executed the said instrument as the attorney in-fact for the said Mildred Standish, in her own right and as executrix and guardian, and as and for the act and deed of the said Mil-
344 dred Standish, in her own right and as executrix and guardian, and he acknowledged to me that he executed said agreement for said Mildred Standish, in her own right and as executrix and guardian, as her act and deed, and as her attorney-in-fact, and for the purposes therein mentioned.

In witness whereof I have hereunto set my hand and affixed my official seal, this 15th day of June, 1877.

[SEAL.] CLINTON McCLARTY,
Notary Public, Jefferson County, Ky.

In the Supreme Court of the District of Columbia.

RICHARD H. PORTER
vs.
STEPHEN V. WHITE. } Eq. No. 7536.

1. The plaintiff is a resident of the city of Louisville, in the State of Kentucky, and he brings this suit in his own right.

2. The defendant is a resident of the city of New York, in the State of New York, and he is sued in his own right.

3. In the year 1865, Austin M. Standish, Monroe M. Parsons, and Aaron H. Conrow, three citizens of the United States, residing while living in the State of Missouri, while traveling in the Republic of Mexico were unlawfully killed by the Mexican authorities; and in 1869 and 1870 the plaintiff was authorized by powers of attorney from the legal representatives of said Standish, Parsons, and Conrow to present to and prosecute before the Joint Commission of the United States and Mexico, for the settlement of claims of the citizens of the United States against the Government of Mexico, and of the claims of citizens of Mexico against the Government of the United States, the claims of the estates of said Standish, Parsons, and Conrow against the Mexican Government for the unlawful killing of said persons. His powers of attorney stipulated that he should be entitled to the one moiety of whatever sums might be awarded by said commission to the said legal representatives of the said Standish, Parsons, and Conrow, as compensation for his services and expenses in the prosecution of said cases.

345 4. The plaintiff did prosecute said case and pay or assume all the necessary expenses thereof, and in the year 1874 or 1875 the said commission awarded to the legal representatives of said Standish the sum of $42,486.30, to the legal representatives of said Parsons $50,828.76, and to the legal representatives of said Conrow $50,497.26, and by virtue of said contract the plaintiff became entitled to the one-half of said sums, respectively, and the said legal representatives of said parties recognized his right to said moities, and respectively claimed for themselves but the one-half of said awards. The said award was to be paid by the terms of the convention between the two governments in annual instalments. There is now in the custody of the Secretary of State of the United States something over $20,000 applicable to the plaintiff's moieties upon said three awards, and the said Secretary is ready and willing to pay the same whenever it shall be determined who is entitled thereto.

5. In the year 1876 the plaintiff borrowed from the defendant at different times and in several amounts an aggregate of about $5,000, and to secure the repayment thereof with interest the plaintiff gave the defendant his note and also a lien upon his moiety in said Parsons award, and also gave the said defendant a power of attorney to collect *said* his said moiety of said Parsons award That subsequently, in 1877, plaintiff borrowed from the defendant an additional sum of money, making an aggregate, with what he had borrowed before, about $7,500. That the defendant, as a condition of making said last loan, required the plaintiff to make to him an absolute assignment of his moiety of the Standish award. But, although said assignment was to be absolute in in form, it was agreed and understood that it was to be simply as security for the money borrowed and for the services to be thereafter performed by the said defendant in the collection of said moities for the plaintiff, and in pursuance of said understanding and agreement the plaintiff did assign absolutely his interest in the said award of Standish, and the plaintiff charges that in equity said assignment, although in form absolute, was but a mortgage or pledge of his said interest in said moieties for the repayment of said monies with interest, and for the services to be rendered by said defendant in the collection of the plaintiff's interest in said awards.

Certain persons representing that the plaintiff had obligated himself to pay them, out of his interest in said awards, divers sums, had filed claims with the Secretary of State upon plaintiff's interest in said fund; said claims were almost wholly false and unjust; but, nevertheless, the Secretary of State had been embarrassed by them, and had refused to pay the plaintiff his interest in said awards until the rights of all parties making claims upon the fund should be settled. The defendant represented to the plaintiff that he was on intimate terms with the Secretary of State, and could easily procure the payment of his said interest in said awards if the plaintiff would authorize and empower him thereto. Believing said representation to be true, and implicitly confiding in the integrity of the defendant, he gave him power of attorney to collect, not only the Standish

and Parsons cases, which had been assigned to him, but gave him also the said Conrow case, in which the defendant had no interest whatever.

346 6. The defendant now, in fraud of the plaintiff's rights and contrary to the agreement and understanding upon which plaintiff assigned to him the said two cases of Parsons and Standish, claims that he is the absolute owner of said two moieties, and refuses to recognize that the plaintiff has any right or interest therein whatever. The moieties of the plaintiff in said two cases amount to not less than $46,000, and the whole of this sum the defendant claims on account of his loan to the plaintiff of about $7,500. The defendant has no other claim upon the plaintiff, nor upon said fund, for he has failed to render the plaintiff any service whatever in the collection of his moieties, and has been conspiring with others who were setting up false claims against said fund, to cheat and defraud the plaintiff.

7. The defendant also refuses to recognize the right of the plaintiff to the moiety of the Conrow case, claiming that he has purchased the plaintiff's interest therein from one Richard H. Musser, who set up a false and fraudulent claim to the one-half of plaintiff's moiety of said Conrow case. Plaintiff believes and therefore charges that the pretence of the defendant that he purchased said pretended claim of said Musser is false, and that while he holds an assignment from said Musser, that he has, in fact, paid nothing therefor, but that he has simply conspired with said Musser to cheat and defraud the plaintiff, and has taken said pretended assignments as an excuse for withholding from plaintiff his interest in said Conrow claim. The defendant well knew if he did buy said pretended claim of said Musser that it was false and fraudulent, and that plaintiff totally repudiated and scouted it. The defendant was acting or professing to act as the plaintiff's attorney while he was pretending to buy up false claims against the plaintiff's interest in said fund, in fraud of his said trust.

8. The Secretary of State, after carefully considering all the claims presented against said moieties, has decided that none of the claimants have any lien upon said fund, except the plaintiff and defendant, and is ready and willing to pay the amount now in his control applicable to said three moieties, upon the joint receipt of the said defendant and plaintiff. The plaintiff has, in a friendly manner, through his agents and attorneys, appealed to the said defendant to settle and adjust the difference between them, and in his desire to make an amicable settlement, has offered to allow the defendant a much larger sum than he is equitably entitled to have; yet thinking he has the advantage of the plaintiff, he has persistently refused to entertain any proposition for settlement, except upon condition that plaintiff shall secure to him absolutely the two cases of Standish and Parsons, and then he will only agree to negotiate as to the Conrow case for the interest of plaintiff therein, subject to the

347 false and fraudulent claims which he pretends to have purchased upon said moiety. Plaintiff has made repeated application to the Secretary of State to pay him the amount of his said

moieties less the claim of said defendant for borrowed money, but although the plaintiff is informed that the said Secretary is satisfied from the evidence that this is all the equitable claim the defendant has in said case, yet inasmuch as he holds absolute assignments for said Parsons and Standish cases, he will not undertake to decide the rights between plaintiff and defendant, but leaves them to settle their controversy by amicable adjustments, or by the determination of a court of competent jurisdiction. Inasmuch, therefore, as the plaintiff is remediless, save in this honorable court he—

Prays that the United States writ of subpœna may issue to the said defendant that he may be a party defendant to this suit. That they may be required to answer all and singular the allegations of this bill, without oath. That the matters herein stated may be enquired of by the court, and upon the final hearing hereof, the defendant may be adjudged to hold said assignment of the plaintiff's moieties in the said cases of Standish and Parsons, as security for the plaintiff's iedebtedness to him for money borrowed, and for no other purpose, and in no other right, and that he may be ordered and decreed to cancel or reassign to the plaintiff's said moieties upon the payment to him by the plaintiff of the amount of money, with interest, which the court may find the plaintiff may be indebted to him. That he may be decreed to authorize and empower the plaintiff to collect from the Secretary of State the amount of the instalments now in his hands, applicable to all three of said cases of Standish, Parsons, and Conrow, and for such other and further relief as may be necessary.

R. H. PORTER.

S. S. HENKLE, *Sol'r.*

I do solemnly swear that I have heard read the bill by me subscribed, and know the contents thereof, and that the facts therein stated upon my personal knowledge are true, and that the facts therein stated upon information and belief, I believe to be true.

R. H. PORTER.

Sworn to and subscribed before me, this 11th day of Dec., 1880.

R. J. MEIGS, *Clerk*,
[SEAL.] By R. J. MEIGS, JR., *Ass't.*

True copy.

R. J. MEIGS, *Clerk*,
[SEAL.] By R. J. MEIGS, JR., *Ass't.*

348 In the Supreme Court of the District of Columbia, sitting in General Term.

McMANUS *vs.* PORTER *et al.* } Equity. No. 6382.

PEUGH *vs.* PORTER *et al.* } Eq. No. Cross-Bill. No. 6382.

CHILES
vs.
PORTER *et al.* } Eq. No. 6703.

WINDER
vs.
PORTER *et al.* } Eq. No. 7011.

Consolidated and certified to this court, from the special term in equity, for hearing in the first instance.

This day these causes, as consolidated, came on for hearing on the bills, cross and amended bills, answers, exhibits, and testimony, and was argued by counsel.

On consideration whereof, it is this 19th day of April
349 ordered, adjudged, and decreed that the said bills, cross and amended bills, be dismissed with costs, from which decree the plaintiffs pray an appeal to the Supreme Court of the United States.

By order of the court: D. K. CARTTER,
Chief Justice.

350 In the Supreme Court of the District of Columbia. General Term.

MACMANUS
vs.
STANDISH *et al.* } No. 6382.

CHILES
vs.
STANDISH *et al.* } No. 6704.

WINDER
vs.
STANDISH *et al.* } No. 7011.

WASHINGTON, D. C., *April 18th*, 1881.

Mr. Justice Wylie (delivering the opinion of the court):

I am directed by the court to announce the decision in the combined cases of MacManus *vs.* Standish *et al.*, Chiles *vs.* Standish *et al.*, and Winder *vs.* Standish *et al.*

These were distinct suits in equity, but, in consequence of their affinity, they were consolidated by order of the court, and the defendants in the cases are the same.

Winder's has some other parties, but they are unimportant, and may be dropped.

Substantially, the parties claiming the fund in Washington are MacManus, Winder, Chiles, Peugh, and Stephen V. White;
351 Porter and White are the defendants.

In 1865, or about that time, shortly after the close of the war of the rebellion, there were three persons—men who were residents of the State of Missouri, and who had been in the Con-

federate service, as we shall see from the record, who left home, leaving their families behind them, with a view to going to Mexico and entering in the army of Maximilian.

After they had entered the territory of Mexico they were arrested by the military authorities there and shot.

On the 4th July, 1868, a treaty was made between the United States on one side, which provided for a mixed commission to sit in this city and adjudicate claims of American citizens against Mexico on the one hand, and claims of Mexican citizens against the United States for losses of property and personal injury on the other.

This commission met in the city of Washington, I believe, in 1869, and with a view to prosecuting claims of the representatives of these three American citizens, who had been slain in Mexico, it was necessary that some steps should be taken. Steps were— Counsel were employed, and the claims were prosecuted, and resulted as follows: The board allowed to Sarah M. Standish, $42,860.30; Stephen K. Parsons, $50,828.76; Mary A. Conrow, $50,497.26; making in all, $143,812.36.

The parties in whose favor this award was made were satisfied to take of their shares respectively one-half. The Secretary, who
352 had the distribution of the funds under the act of Congress which was passed for the purpose of carrying out the treaty, directed that one-half of each of those claims should be paid to the claimants before the board. That money was paid. The parties took the money. There was dispute among the agents & counsel as to the other one-half, as to who should be entitled to it. The claimants would *would* not undertake to determine that, but they left that half in the hands of the Secretary of State. They took their one-third, and now the dispute here is over the half of the $143,812.36 in the aggregate, which half amounts to $71,906.18.

The money being in the Treasury subject to the control of the Secretary of State, it was thought best by these parties that the Secretary of State should be made a party to the proceedings.

He has not appeared. He has put in no answer, but we do not regard that as of any importance.

The first question to be decided is whether this court, under these circumstances has jurisdiction.

All the parties who claim any interest in this money are before the court, except the claimants themselves, who were residents of Missouri. They are made parties, and publication was made to bring them in, but they have not appeared; but we heard their statements. We have their evidence, and the Department of State has communicated the fact to the court that they have taken their half and left the other half to be subject to the controversy. We regard them as out of the case, and we do not regard them as material parties.

Now, with all the parties having interest in the fund and
353 the money in the Treasury of the United States, subject by the terms of the act of Congress to the orders of the Secretary of State, the question is, whether this court has jurisdiction.

The cases of Commegeys *vs.* Vasse, in 1 Peters, and of Wylie *vs.* Cox, in XV Howard, and perhaps two or three other cases, have been supposed to bear somewhat on this question.

But in those cases the money was not in the Treasury at all.

The money in Commegeys *vs.* Vasse had been paid by the Treasury to one of the parties, and was an action brought in Philadelphia by the other parties of the case—an action upon money had and received in Michigan.

In the case of Wylie *vs.* Cox the money was not in the Treasury. It had been drawn by the administrator of the estate, and the bill was filed by the attorney claiming the property.

It was simply a question between an ordinance & these parties. And then there is another class of cases which are supposed to bear upon the subject, which we do not think has anything to do with — question. They are cases which have been decided under the treaty of Gaudaloupe Hidalgo, between the United States and Mexico in 1848, and the act of Congress which was passed the following year for the purpose of carrying that treaty into effect, distributing the funds which might be awarded under that treaty.

The 6th section of the act. of Congress carrying that treaty into effect authorized claimants who had not been recognized by the commissioners, and who might assert claims against the fund to institute their suits within a fixed period.

354 I think it was 30 days from the time of the filing of the award in the court, so that all the cases which have arisen under the treaty of Guadaloupe Hidalgo must be laid out of the question, too, because the act of Congress provided for them.

The United States made another treaty through (with?) Brazil, which is referred to in the case of Lewis *vs.* Bell, XVII, 616.

There the court took jurisdiction. The money was in the Treasury, but the law for carrying that treaty into effect contained the same provision which was contained in the law relating to the Mexican treaty. Indeed, it refers in express words to the 6th section of that act, so that the case of Lewis *vs.* Bell, which was entertained by the Supreme Court of the United States, does not bear upon the question. The only class of cases that we find which are relieved from these external circumstances and raise the question purely whether litigants may be entertained in this court in regard to a fund in the Treasury of the United States, are cases which have arisen under the treaty with France on the 4th July, 1831, and the act of Congress of the following year, which provided for the carrying of that treaty into effect. Neither that act nor the treaty contained any authority to the courts to take jurisdiction in regard to litigation between the claimants over the fund awarded.

But a number of cases have arisen under that treaty and have been entertained, both by this court and by the Supreme

355 Court of the United States. I will refer in the first place to the case of Ridgway *vs.* Hays, decided by this court, and reported in V Cranch Circuit Court Reports, p. 23.

That was a controversy which arose under the French treaty, and

the court took jurisdiction because it had the parties before it. The fund was in the Treasury.

The officers of the Treasury and the Department, the Secretary, and the Treasurer himself, were made parties to that suit. They appeared and entered a plea to the jurisdiction. It was by way of answer. They said, notwithstanding their plea to the jurisdiction, if the court decided to take jurisdiction they would respect the decision of the court in the distribution of the fund.

There was another case, the case of Dutiths, administrator, *vs.* Comsault, also reported in V Cranch's Circuit Court Reports, 349, in which there is a very interesting and very able discussion of this subject by the late Chief Justice Cranch. He named very high authority there, and the opinion in that case is well worthy of consideration. It is a case not referred to by counsel on either side in the argument, but it followed soon after the previous case of Ridgway *vs.* Hays, and the same question arising in both cases must have been fully considered by that court after this double discussion, and they were decided in favor of the jurisdiction of the court. There is another and an analogous case not arising under the French treaty, but under a treaty between the United States & Great
356 Britain, the case of Pemberton *vs.* Sockett *et al.*, reported in XXI Howard, 257–260. The commission sat in that case in London and made an award in favor of an American citizen for a considerable amount, and our fellow-townsman, Col. Berrett, was one of the counsel.

There were several others. The money, having been paid by the British Gov't to our Gov't, was in the Treasury here, to be paid to the claimants. We had no act of Congress upon this subject that I have been able to find as to the distribution of the award, and the award was distributed according to the terms of the treaty. But the money was remitted here by the British Gov't, to be distributed, and Berrett and the other counsel in the case for the claimant filed their bill praying to be allowed their fees out of the fund.

This court took jurisdiction of the case, the parties being here, and decided in favor of the counsel in the case. The case was taken, by appeal, to the Supreme Court of the United States, and the decree below was reversed, the court holding that counsel had no hearing under the circumstances of that case, and one reason they gave was that the treaty itself was binding; that each Gov't should be represented by its selected agents. Another reason, however, and a more satisfactory one, was that the counsel who had been employed to prosecute the claim in its original stages in this country under their contract seemed to have been employed merely with a view
357 to what was necessary to be done, and that other counsel having been employed abroad for the claimant, the counsel here had no claim.

I think also that our practice, the practice of this court since my memory, has been a uniform course of decision in favor of the jurisdiction of the court, where it had the parties here before it, and beyond that point I need not go, and I do not propose to go, in regard to this case. I do not wish to intimate an opinion, or an impres-

sion even, that if this fund is in the Treasury, and if the party is not here, that that would make any difference. That is not the question which may be important to decide in those cases which has been argued, and which is now under consideration.

But this case does not require us to go beyond its fact; that is, that the fund is in the Treasury here, and the parties claiming the fund are before the court; and that, we hold, gives jurisdiction.

Now as to the claims.

Chiles claims his fee is one-fourth of the $71,000 for distribution, making $17,976.53¼;

Peugh claims another fourth, which is $17,976.53¼, one-eighth of the original fee;

Charles H. Winder claims 8 per c't, which would amount to $5,752.49, and

Thomas P. MacManus claims 20 per c't, or $14,381.26.

As to Chiles, the first of these parties who claims a lien on
358 this money, he rendered no service in prosecuting the claims. He is an illiterate man, ignorant, but adventurous; one of those ubiquitous characters that go around like another character, seeking something to devour, probably.

But he claims that he ought to be paid out of this fund because he was the original discoverer. He knew something about these men who were killed, and when he heard of the treaty of the 4th July, 1868, it occurred to him that there were three good claims; so he made a suggestion to Richard H. Porter of his views on the subject.

Porter was another man of like character, but was no lawyer and no professional man. His letters show he was illiterate, but sharp, and a man who was in the habit of living on adventure by his wits. So at Chiles' suggestion Porter comes into the business, and he goes to Missouri.

He was a stranger there; knew none of the people, & knew nothing of the country, and he there met with a person whom he called Col. Rennick, a lawyer, and with Gen'l Shields, whom everybody knows, and told them what he was after, and asked them if they could not recommend him to some party who would assist him in getting up these claims for prosecution before the tribunal.

They recommended a lawyer there by the name of Musser. Musser, although a lawyer and evidently an intelligent man, was rather impecunious it seems.

He had no money to advance on the contingencies, but he agreed
to take the cases, and he, having been in the Confederate
359 service with these three parties who had been slain in Mexico, it was probably a fortunate selection. At any rate, Porter selected him, and an arrangement was entered into between them that Musser should get up the claims, find the parties, secure the contracts, the powers of attorney, and that he & Porter were to divide the fees.

Porter returned here, and in time, without much delay, Musser succeeded in obtaining contracts from each of these parties by which he was to have 50 per cent. of each of the claims.

He asked from them a power of attorney at the same time to authorize him to prosecute the claims. The power of attorney contained authority to substitute others under him or with him, and these were taken in Musser's name.

By Porter's testimony, and indeed by all the testimony in the case, this act of Musser's in taking the contracts in his own name with power of attorney to him alone gave offense to Porter. Porter considered that the claims were his property by right of discovery. This was false, because Chiles was the discoverer of them. Porter claimed that inasmuch as he first communicated the circumstances of the cases to Musser, that he himself ought to be the party with whom the contract was made and to whom the power of attorney was given. That, however, is a matter of dispute between Musser & Porter. Musser says that it was distinctly understood that the contract should be made with the persons in his own name, and the power of attorney given to him. However that might be,
360 that was a thing which the claimants had a right to determine.

These parties could not bargain away between themselves the contracts that were made between third parties. These third parties were the most deeply interested in this claim. It was for them to say with whom they made contracts, and to whom they gave powers of attorney. They knew about Musser being a lawyer in St. Louis. He was engaged by them from the fact that he had been in the Confederate service with their father, and they chose to trust him. But the contracts were made in that way. That gave offense to Porter.

Between Porter and Musser, it was admitted by Musser that Porter was to have one-half of the fees.

Musser came East and the time was approaching when it was proper to have the cases presented. Musser prepared the petitions in the first instance, and had them forwarded. Some corrections had to be made.

In February, 1870, Porter came East. The contracts had been served in the December preceding, in the name of Musser. Porter came East and stopped at Washington. He went to see or fell in with a gentleman by the name of Chas. E. Rittenhouse, and a gentleman by the name of Peugh. Peugh, I think, was in Rittenhouse's office. Porter entered the house and told his business. He wanted to raise money on his interest in these claims, and he entered
361 into a contract with Rittenhouse and Peugh to give them one-half of his fees. His fees were 50 per cent. and they were to have one-half. This, remember, was in February, 1870. Porter had no power of attorney from the claimants at this time. He had no substitution from Musser at that time. He was utterly without anything to show, except his assertions that he had an interest of one-half in the claims. He agreed to the contract with these two gentlemen, Peugh and Rittenhouse, as I have stated, and he received from Rittenhouse $300. That was all Rittenhouse could do for him, because he could not aid him as a lawyer. He was not a lawyer. Peugh was a lawyer, but a modest one, and did not undertake to

prosecute the claims himself subsequently, although his part of the contract was of that character. He brought in Mr. Winder, and this contract was under seal, and he professed to make it as the attorney for Musser, and as representing the claimants. Well, he had no authority from Musser to make the contracts at the time, especially a contract under seal. His substitution as attorney was not given to him by Musser until 4th July following. As to that, Peugh, as I said, was a lawyer, but a modest one, and he did not undertake to do anything in prosecuting the case, but he engaged Mr. Winder and agreed to give him $1,000.

When he had given some attention to the case, time passed
362 along and Rittenhouse became dissatisfied with his position, probably, in it and wanted to get his money back, and he agreed to relinquish his interest in the contract.

That broke up the contract pretty much. It was a joint contract. The two and each were bound jointly and severally together for the service and in the money to be paid. Rittenhouse, having gone out of the contract, still left Peugh in it, as represented by Winder, and that is the way that Peugh's claim comes to be reduced to one-half of the original 25 per cent.

Musser continued to lead in the prosecution of the claims and in the early preparation of them. After these transactions with Peugh & Rittenhouse had taken place, Porter returned to St. Louis, and there he obtained from Musser, for the first time, a substitution in the power of attorney, and from the evidence in the case it appears that this was given to him for the purpose of enabling him to come here and raise money to use. Well, I don't know how.

There is some doubt about that; but some money was used in carrying on the claims, and I suppose that both parties needed money themselves. He came East with this substitution, and on faith of the substitution he endeavored to raise money, but failed, and then returned to St. Louis. He got to St. Louis, as he himself says, in September, 1870. He left there, as I said, before the 4th July, because that was the date of the substitution.

363 But he failed and returned to St. Louis, reaching there in September. In one place in his testimony he says it was December and in another place he says it was September that he got back to St. Louis. Musser says it was September, and as the two contradictory statements of Porter set off one against the other we can lay that out and suppose that his statements are not to be relied on.

But, at any rate, he returned there in the fall. Then a quarre grew up between Musser and Porter. Porter denounced Musser for having perpetrated a fraud on him in securing contracts between himself and the claimants and the power of attorney, and he wrote to Col. Rennick, requesting him to call upon Musser and inform him that he would have nothing further to do with him, and would have no association with him in the prosecution of the claims, and that he repudiated the agreement between them.

It was a very uncivil thing in him, indeed—an act on his part which can only be accounted for by his ignorance and passion, and

most possibly he became mixed with the purposes of fraud. At any rate, he claimed that as Musser had had his name in the contracts, and as that was a fraud upon him, he was entitled to the whole 50 p'r ct., and said that he would pay counsel for his services when he got the money, whatever it was.

Thus as early as the fall of 1870 he quarreled with Musser, who held the contracts and held the power of attorney which had been restored to his possession by Porter in the expectation that
364 he was to throw Musser entirely out of it. From that time on he would have nothing to do with Musser. Well, Musser took him at his word.

Musser went on in performing his duty in regard to prosecuting the claims, and in spending money, procuring evidence, and seems to have performed his duty with regard to the claimants with fidelity and abiiity.

He was evidently a man of ability. His testimony exhibits that in every page. Porter having taken this antagonistic position with Musser, Musser took him up and ended the connection, and the agreement terminated.

After that, it was probably a year after, I think, maybe a little more, Musser in the meantime prosecuting the claims as he best could, came occasionally to Washington (never came until after the awards), and still conducted the business, but Winder was going on attending to the business here, under his contract with Rittenhouse & Peugh. That helped him some, but Musser, finding that he wanted more assistance, employed the respectable and able legal firm here of "Pike, and Johnson & Co." They came into the case, and from that time on they prosecuted it with energy and ability, aided by Musser at the other end.

Pike & Johnson came into the case at the instance of Musser, but with the knowledge and hearty approval of all the claimants, and Musser's contract with Pike & Johnson was to divide his own fee of fifty per ct. under his contract with Pike & Johnson, instead of Porter, under the contract which Porter had repudiated, and the
365 case was prosecuted then to final award, which was made in 1875.

Pike and Johnson came into the case in March, 1872, and for three years and upwards they were in the case, performing their whole duty. Towards the conclusion of the proceedings a difficulty appeared which brought MacManus in, Porter all the time claiming that he was the *dominus lites*. A difficulty towards the close of the prosecution, as I said before, occurred of this character. A point was made by the Mexican attorney that these murders were the acts of unauthorized persons, vandals, for whose acts the Mexican Government was not responsible; and that the man Valdez Sanchez, who had command of the party by whom the murders were committed, was only a bandit, and that the Col. Valdez (Sanchez?) of the Mexican army, under whose orders it was said these men were killed, was at the time of the occurence 500 miles distant.

Well, this gave some alarm to Porter, and some to Winder, and Porter then finds MacManus. MacManus had been in the employ

of the Government directly after the war, down upon the border there, and knew the country, and knew a great many persons, and Porter employed MacManus to go down and hunt up some testimony to prove that the Valdez (Sanchez?), under whose orders the murders *was* committed, was actually the officer who was in command of the Mexican forces when the murders occurred. Porter agreed to give MacManus 20 pr. ct. By this time Porter's
366 50 pr. ct. was more than exhausted. He had paid it out pretty liberally all around, and his acts as a reasonable being could not be accounted for on any other hypothesis than that he claimed the whole fee. He was only entitled to one-half of the fee under his contract with Musser, and he parted with more than his interest. But if he was to have the whole, he could pay them and have something himself.

MacManus was instructed to go down and get this testimony. He got some proof. I think it was not necessary. It seems not to have been necessary, and that was his share of the performance. The expenses, I believe were born- by himself.

Now we have gone over all these claims. The question now is, whether Musser & Pike & Johnson, or those who claim through them, are to have this money, or Porter and those who claim under him?

Now, it is a principle upon which we act in courts of justice, that a party who comes into a court of equity asking its assistance must come in with a pure, clean record.

He cannot repudiate the contract at one time and, after the fund has been realized, come in again and seek to set it up. We have seen that Porter repudiated this engagement with Musser before many steps had been taken in the prosecution of the case, and gave notice; and, lest I should possibly do injustice to Porter, I will read some of his own testimony at the bottom of page 14: "In a letter written to Mr. Rittenhouse in the latter part of the fall or
367 winter of 1870 or 1871 he claimed to be a partner of mine (that is, Musser), and he, inquiring as to a contract I had made with Rittenhouse, I wrote a letter to Robert Rennick, telling him of the advantage that he (Musser) was attempting to take, claiming to be a partner, drawing Mr. Rennick's attention to the fact that he knew that he was only employed by me, and that I would have nothing to do with him.

"That I would be in St. Louis in a short time, and would be ready to settle with him, Musser, and asked him to show that letter to Musser, and telling Rennick that I would hold him responsible for having recommended Mr. Musser to me. I did go to St. Louis, and am satisfied that it was some time in December, 1870. I saw Col. Rennick, and he told me that he had shown the letter to Musser. I passed on through to Independence, Mo., and did not see Musser. I received a letter some time last winter from Musser. I answered it, and told him I would be in St. Louis in a short time, and would settle with him. I went to St. Louis June, 1871, and, through Col. Rennick, proposed a settlement—had a paper submitted to him, Musser. He made some comments, and chose Col.

Armstrong as his arbitrator. I had my attorney to write out the paper, making the result of the arbitration binding and final. I had it returned to Musser to sign it. He kept the paper, and would not return or sign it. I then notified him that I would have nothing more to do with him (that is, Musser). This was in June,
368 1871. I returned here in the fall of '71; received notice from the commission that the claims of Parsons, Standish, and Conrow must be closed up," and then he wrote to Messrs. Standish, Conrow, and Parsons in 1871—after he had repudiated his contract with Musser, he wrote to all these claimants, and as the case goes on to show, he sought to obtain new contracts and new authority from them, and did his utmost to disaffect them towards Musser, and to break up the confidence that existed between them and their attorney. He failed in that, but his evidence shows, and is confirmed by the testimony of Musser in the case, that from a very early stage in these proceedings he repudiated the whole contract with him. Now what has become of those gentlemen who hang upon the string that supports Porter?

If Porter's power to contract was terminated, theirs of course must follow with him.

Chiles certainly has no lien upon this fund. He has rendered no service, and was not capable of rendering service. He happened to know something about these men who had been killed, and he received some promise from Porter. Porter had no authority at that time; knew none of the parties, and hadn't even gone into it. MacManus claimed under a written contract with Porter, made in 1874, but that was long after the contract between Porter & Musser
369 terminated. Porter was acting on his own hook, without a contract, and without a power of attorney, and he was superfluous; he and his party were superfluous on the stage. His day had gone. (When; in 1870?)

Peugh, for his part of the contract, had substituted Winder, who rendered the services that were rendered by that firm, and Winder did do something in the case for which he ought to be paid. He is the only man in the party that did any service. Winder is dead, and his estate ought to receive compensation for the effect of his services. The rest is all speculative; all adventure; no honest and fair services rendered, and we have determined that all these several bills, these cases that have been combined by order of the court, are one and all dismissed.

[Endorsed:] Copy of the decision of the court in banc. R. H. Porter *vs.* Stephen V. White. Equity. No. 7536. Filed as part of White's answer.

370 In the Supreme Court of the District of Columbia, the 23 day of April, 1881.

THOMAS P. MACMANUS
vs.
RICHARD H. PORTER *et al.* } No. 6382. Equity. Consolidated.

CHARLES H. WINDER
v.
RICHARD H. PORTER *et al.* } No. 7011.

JOHN CHILES
v.
RICHARD H. PORTER *et al.* } No. 6703.

Know all men by these presents that we, Thomas P. MacManus, Robert M. Thompson, and Jeremiah C. Lotz, are bound unto the defendants in the above-entitled causes in the sum of five hundred ($500) dollars, to be paid to the said defendants in the said causes, their executors and administrators; to which payment, well and truly to be made, we bind ourselves, and each of us, jointly and severally, and our, and each of our, heirs, executors, and administrators, firmly by these presents. Sealed with our seals, and dated this 23 day of April, 1881.

Whereas the above-named Thomas P. MacManus hath prosecuted an appeal to the Supreme Court of the United States to reverse the decree rendered in the above suit by the said supreme court of the District of Columbia:

Now, therefore, the condition of this obligation is that if the above-named Thomas P. MacManus shall prosecute his said appeal to effect, and answer all damages and costs if he shall fail to make good his plea, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

(Signed) THOS. P. MACMANUS. [SEAL.]
ROBERT M. THOMPSON. [SEAL.]
JEREMIAH C. LOTZ. [SEAL.]

Approved April 27, 1881.
(Signed) ANDREW WYLIE,
Justice Sup. Ct. D. C.

371 AUTHENTICATION OF RECORD.

Certificate.

CLERK'S OFFICE,
SUPREME COURT OF THE DISTRICT OF COLUMBIA.

I, R. J. Meigs, clerk of the said court, do hereby certify that the printed matter & writings annexed to this certificate are true copies of originals on file and of record in said office, and that said originals together constitute the record of the proceedings of said court in this cause.

Witness my hand and the seal of said court, this 15 day of Oct., 1881.

[SEAL.]

R. J. MEIGS, *Clerk*,
By R. J. MEIGS, JR.,
Assistant Clerk.

Certificate.

I, David K. Cartter, chief justice of said court, do certify the foregoing attestation by R. J. Meigs, clerk of the said court, to be in due form.

Witness my hand and seal, this 15 day of Oct., 1881.

D. K. CARTTER, [SEAL.]
Chief Justice.

Certificate to Justice's Official Character.

I, —— ——, clerk of said court, hereby certify that David K. Cartter, whose genuine signature is subscribed to the foregoing certificate, was, at the time of signing and attesting the same, chief justice of said court, duly commissioned and qualified.

Witness my hand and the seal of said court, this 15 day of Oct., 1881.

[SEAL.]

R. J. MEIGS, *Clerk*,
By R. J. MEIGS, JR.,
Assistant Clerk.

Endorsed on cover: Dist. of Col. sup. court. No. 135. Samuel A. Peugh, appellant, *vs.* Richard H. Porter *et al.* Filed 19th October, 1881.

112-137

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CLERK.

IN THE
Supreme Court of the United States.

OCTOBER TERM, A. D., 1884.

SAMUEL A. PEUGH, *Appellant*,
vs.
RICHARD H. PORTER, *et als.*
} *No.* 135.

Brief on behalf of the Appellant,

—BY—

SHELLABARGER & WILSON.

Milans, Pr., 519 7th St. N. W.

IN THE
Supreme Court of the United States.

OCTOBER TERM 1884.

SAMUEL A. PEUGH, *Appellant*,
vs.
RICHARD H. PORTER, *et als.*
No. 135.

BRIEF FOR APPELLANT.

STATEMENT OF FACTS.

The three defendants named in the record in this case, Mildred Standish, Mary Ann Conro, and S. Kearney Parsons, had claims against the Mexican Government which were presented to and adjudicated by the Mexican Claims Commission which recently sat in the City of Washington, and the Commission awarded on the three claims an aggregate sum of $143,812.32.

The claimants above alluded to had entered in to agreements with counsel for the prosecution of these claims by virtue of which agreements the counsel were to receive over half thereof for their services and expenditures in respect of the prosecution. After the awards were made, a controversy having arisen between counsel with reference to their half of said awards, it was arranged that the portion thereof that was going to the claimants respectively should be paid to them by the Secretary of State, and the remaining one-half was to be retained by the Secretary for the purpose of adjudicating the rights of the attorneys with respect to the same; so that, so far as the claimants in whose favor respectively the awards were made are concerned, they have no interest in the controversies now pending. It is as to the other half, to wit. the sum of $71,906.16, that the present litigation exclusively refers.

$71.906.16

This pending litigation grows out of the relations existing between the various parties who claimed to have been attorneys in the prosecution of these claims, and in order to give the Court a clear understanding of this record the following facts are important to be noted:

I. Richard H. Porter, having knowledge of the existence of these claims, and that a treaty had been entered into between the United States and Mexico, whereby the Commission above referred to was created for the purpose of adjudicating claims of this character went to St. Louis for the purpose of securing from the claimants above-named respectively contracts for the prosecution of the claims.

II. Said Porter was not personally acquainted with these claimants, and he went to an attorney in St.

Louis, Richard H. Musser, and disclosed to him the fact that such claims existed, and arranged with him that he, Musser, suould ascertain the whereabouts of these claimants, and procure from them contracts, with powers of attorney, to prosecute these claims, he and Musser to share equally in the compensation that the claimants should give for such prosecution.

III. Pursuant to this Musser did ascertain the whereabouts of these parties, and did procure contracts and powers of attorney for the prosecution of said claims, and for a compensation equal to fifty per centum of the amount recovered. These contracts and powers of attorney were taken in his own individual name. Musser had no knowledge of these claims or of the claimants until they had been brought to his attention by Porter as above stated.

IV. Samuel A. Peugh and C. E. Rittenhouse were engaged in the prosecution of claims against the Government. Peugh was a lawyer of long standing. Rittenhouse was a banker and claim agent, and the contracts having been procured by Musser as above stated, Porter went to Peugh and Rittenhouse for assistance in the way of money and professional services in the prosecution of said claims, and an agreement was entered into in writing, under seal, between the said Porter and Peugh and Rittenhouse, by virtue of which Peugh and Rittenhouse were to receive for the moneys advanced and the services rendered the one-half of Porter's interest in the avails of such prosecution, (R., p. 38 and 39.)

V. Under this agreement Peugh and Rittenhouse advanced money to Porter for the purposes of said prosecutions, and Peugh proceeded to render professional services in that behalf.

VI. Peugh and Rittenhouse employed Charles H. Winder, who is named as a defendant in the pleadings, and who was recognized an attorney of long standing and ability, to render professional services in the matter of said prosecution; and Winder under this employment did thereafter until the said awards were made, render professional service.

VII. After Porter had made the arrangements above stated with Peugh and Rittenhouse, he had a disagreement with Musser, growing out of the fact that Musser had taken the contract and powers of attorney in his own individual name; and not in the name of him, Porter, but on the 4th day of July, 1870, Musser gave to Porter authority to act under his said contract and power of attorney (See R. pp. 309-310), the agreement between Porter and Rittenhouse and Peugh having been made on the 16th of February, 1870. P 39.

VIII. From the time of the employment of the said Peugh and Rittenhouse by Porter, as aforesaid, they actively participated in the prosecution, had correspondence with Musser in regard to the same, and Musser was fully informed of the fact that they had thus been employed by Porter, and they and Musser acted conjointly in said prosecution. On the 2nd of September, 1872, for considerations therein expressed, Rittenhouse released to Porter all the interest that he acquired in these cases under and by virtue of the agreement between said Porter and Peugh and Rittenhouse. (R. p. 39.)

IX. Porter and Musser having disagreed, the former undertookto repudiate the arrangement as between him and Musser, Porter claiming that he had the exclusive right to the management of said cases.

Musser, however, continued in the prosecution of them, and em- ployed Pike and Johnson on the day of March, A. D., 1872, to aid him in that behalf.

X. Peugh and Winder continued actively in the prosecution until awards were rendered. Peugh had no knowledge of the release made by Rittenhouse to Porter until some time after it had been executed.

XI. Before said awards were made, the question having arisen whether or not the party who was in command in Mexico of the forces which committed the acts out of which said claims arose, was really acting under the authority of the Mexican Government or not, Thomas P. McManus, who had been in the service of the United States in the region of country where these acts were committed, was employed by Porter to proceed to that locality for the purpose of procuring testimony to prove that these acts were committed by parties for whom the Mexican Government was responsible, and on the 21st of April, 1874, Porter and Winder, the latter of counsel, entered into an agreement with McManus, by which he was to be paid one-fifth of the entire fee which the claimants were to pay in consideration of the services rendered by him. (R. p. 5).

XII. These awards having been made as above stated, and the claimants having received their one-half of them, and the Secretary of State having retained the other one-half for the purpose of disbursing the same according to the rights of the parties therein, as those rights might be determined, Thomas P. McManus filed a bill in the Supreme Court of the District of Columbia, No. 6,382, against the various parties above named, together with the claimants, claiming in said bill the compensation which was stipulated to be paid him by the agreement above referred to. One

Chiles, not above-mentioned, and who it appears had no active participation in the prosecution of the claims, but who claimed to have been the original discoverer of these claims, also filed a bill in said court, No. 6,703, he claiming an interest in this fund.

Winder also filed a bill against the parties above alluded to, in said court, No. 7,011, he likewise claiming an interest in said fund.

Peugh was made a defendant in these cases. In the case of McManus, against Standish *et al.*, No. 6,382, Peugh filed his answer and cross-bill, (R. 17,) and amendment thereto, (p. 21, *et seq.*) in which he set forth his relations to this business, substantially as stated above.

These cases were consolidated in said Court, and upon the final hearing, the several bills and cross-bills were dismissed. R., p. 350.

XIII. Appeals were prayed, but Peugh alone perfected his appeal (p. 360), so that this case now pending in this Court involves alone the rights of the said Peugh in and to the fund in question.

XIV. Long after said awards were made, to-wit: on the 20th of September, 1876, Porter made a transfer of his interest to Stephen V. White, who is made a party defendant in the bills hereinbefore referred to. As this transfer was made after the rendition of the awards, and after all the rights that Peugh had in the fund, whatever they may be, had fully attached, we have not considered that the said White had any rights that could affect those of Peugh, and therefore no detailed statement of his relations to the case has here been made, but White's version of it will be found in his answer at p. 32 of the Record, where it will be seen that whatever rights he did acquire were only acquired at the date last above named.

Assignment of Errors.

The appellant, Samuel A. Peugh, now comes and assigns error in the record as follows:

I. The Court below erred in holding that the evidence in the cases did not establish a valid and binding contract as between Chas. E. Rittenhouse and Samuel A. Peugh and R. H. Musser, to wit, the contract dated the 16th of February, 1870.

II. The Court erred in not finding from the evidence in the case, that the said contract of the 16th of February, 1870, was fully ratified and confirmed by the defendant, Richard H. Musser.

III. The Court erred in not finding from the testimony in the case that the said defendant, Richard H. Musser, ratified and confirmed and was bound by the said contract of the 16th of February 1870.

IV. The Court erred in not finding that the services rendered by the said appellant, Samuel A. Peugh, and by Chas. H. Winder were rendered under a valid employment, binding upon the said Richard H. Musser from and after the 16th day of February, 1870, and also binding upon all parties and persons holding from under, through or by the said Richard H. Musser.

V. The Court erred in not finding from the testimony in the case that the equities in the case as between the said Samuel A. Peugh and the defendants to his cross-bill were with the said appellant as such equities are established by all the evidence in the case.

VI. The Court erred in holding and finding that after the appellant and the attorney by him employed the said Chas. H. Winder, were duly employed and engaged as attorneys in the case, and after such employment had been recognized, ratified and approved by the said Richard H. Musser, any controversey or quarrel between the said Richard H. Musser and Richard H. Porter, in which quarrel or controversy the said appellant and the said Winder never were involved or became a party to, or in any way assented to, were by reason of such controversy affected in or deprived of their rights under the said employment as attorneys in the case.

VII. The Court erred in holding and finding from the testimony in the case that any acts of the said Richd. H. Porter in repudation of said employment of said Peugh and Winder as disclosed by the evidence, could or did affect the rights under their said employment of the said Samuel A. Peugh and the said Chas. H. Winder, or either of them.

VIII. The Court erred in holding that the said Richard H. Musser could in equity repudiate or terminate the said contract of employment of the said Peugh and Rittenhouse and of the said Winder or of either of them under all the facts in the case as established by the evidence therein.

IX. The Court erred in holding that under the facts established by the evidence in the case, the defendant Musser could rescind the said contract of employment of the said Peugh and Winder (even if the evidence in the case would give such right of rescinding the contract upon and after due notice of such rescinding) without giving to the said Peugh and Winder express notice of such election to rescind, immediately upon

the discovery of the facts and acts upon which the said Musser claimed to be entitled to base said recision

X. The Court erred in holding that the rights of the said Samuel A. Peugh, and of the said Winder holding under him, could be, or were affected by the release to the said Porter by the said Rittenhouse of the said Rittenhouse's interest in the said contract of employment of the 16th of February, 1870, such release by the said Rittenhouse bearing date the 2nd of September, 1872.

XI. The Court erred in finding the equities of the case against the said appellant, as those equities are set up in his said cross-bill, and in dismissing the said cross-bill.

BRIEF.

By reference to the opinion of Mr. Justice Wylie (R. p. 358) as the same is printed in the Record as an exhibit to the answer of S. V. White (which we understand was not an authorized opinion of the Court, but was taken down stenographically for private purposes) it will be seen that Peugh's claim upon this fund, amounting to $17,976.54 (R. p. 18) was rejected upon the ground that he acquired his standing in the case by virtue of the employment of him and Rittenhouse by Porter, and that inasmuch as Porter's contract had been terminated, their's must fall with it (R. p. 359).

This position of the judge, if he is correctly reported, proceeds upon the hypothesis that, since Rit-

tenhouse and Peugh held no employment, except from Porter, and since Porter, on the 16th of February, 1870, the date of the employment by Porter of Rittenhouse and Peugh, then held no written power of substitution or written employment from Musser, therefore, when Porter repudiated his relations to the case in connection with Musser, he thereby, as a matter of law, repudiated and ended all employments which had been by him made, including the employment of Rittenhouse and Peugh, and thus he cut off all rights of compensation to Peugh, growing out of the employment of the 16th of February, 1870, by Porter.

This, we think, is the exact extent of the grounds upon which Peugh was, by the court deprived of his claim, and White, the only party interested against Peugh in this contest adopts this, in his answer, as the ground upon which he bases his resistance of Peugh's rights. And we therefore direct our attention to the replies which meet and, as seems to us, completely overthrow all the foundations upon which are thus rested the resistance to Peugh's demands.

If these positions attributed to Justice Wylie are overthrown, then the defense to Peugh's demands completely disappear from the case, because there are none others upon which that defense can be rested. It is due to the case and to the court that we should state, as preliminary to the statement which we make below of the propositions of fact established

by the evidence in the record, two or three considerations having relations to the general aspects and equities of the case, as it resulted in the decree below dismissing Peugh's cross-bill, and relating to the general features of the evidence of what we regard as the two principal witnesses in the case, to wit, Musser and Winder. The first of these general considerations, prefatory in their nature, is to direct attention to the great injustice wrought by said result dismissing the bills.

It will be seen in our recapitulation of the points of fact proved, that the great body of the services rendered in the cases, before the mixed commission, were rendered by Peugh and by Charles H. Winder, employed by Rittenhouse and Peugh, and afterwards by Porter; and yet the result reached deprives, absolutely and completely, these parties who rendered about all the services which ever were rendered, of every cent of compensation for their said services, and also of all the moneys by them expended in the case.

This result is so inequitable that Justice Wylie was, in the conclusion of his opinion (R. 359), driven to say of Winder's services, that "Winder is dead and his estate ought to receive compensation for the effect of his services;" and yet that estate, under the decree which we seek to reverse, receives nothing.

We shall have occasion to notice, hereafter, the ex-

tent and character of the services rendered by Peugh. He, too, by the dismissal of his cross-bill is completely ignored, and his uncompensated services were turned over for the profit of Stephen V. White, who, by the record, is shown to have purchased his share of the compensations at a large speculation. A court of equity, we submit, will not suffer such results to stand as the decree of the court, unless forced to such conclusion by rules of law too strict to be overcome by the sense of justice which is supposed to guide the determination of such courts.

A second general consideration is one relating to the character of the evidence of the said two principal witnesses whose testimony especially bears upon Peugh's claim. In regard to the spirit, care, intelligence, calmness, and avoidance of passion displayed by the testimony of Mr. Winder, we need do no more than call the attention of the court to the entire substance of this witnesse's testimony.

It will be found by the court to be singularly excellent in the qualities we have just alluded to.

A glance, on the other hand, at the testimony of Musser, we submit, shows it to be singularly lacking in the qualities which we have just stated appear in the testimony of Winder. He evidently testifies under the complete control of excessive and overmastering passion. To say of its general spirit that it is partial and characterized by unbecoming prejudice and abuse, is to state its character, in this regard, mildly. On page 234 it characterizes both Rittenhouse and Peugh as "such creatures." On the same page he characterizes Winder as a "mere creature in

the hands of Porter," the same Porter whom White used when he brought him out, June 19, 1877, in total disregard of the right to compensation which Winder and Peugh had derived under their employments made through this Dr. Porter.

In other places in his testimony it will be seen that this witness characterizes Rittenhouse, Peugh, and Porter as conspirators (R. p. 234, 245); some of them as having "stolen" (R. p. 234), and other like epithets; and yet this witness, Musser, is one who is, by the testimony clearly brought, as to his entire testimony, within the maxim respecting weight of evidence, which says: "*Falsus in uno, falsus in omnibus.*"

Take, for example, and only for example this. On the very material point of Winder's assent to his and Peugh's being turned out of the case by Pike and Johnson, he swears that he had seen Winder, and that Winder had written him, Musser, his, Winder's, willingness to have new powers executed to Pike and Johnson, whereas the fact was that he had neither seen Winder nor ever received any such letter. (R. 135.)

There is one other preliminary matter having general bearing upon the case which should be noted. This is the spirit of fairness and conciliation which characterizes the conduct of Rittenhouse and Peugh throughout the entire transaction. This spirit will be seen in such letters by Rittenhouse to Musser as that of the 25th of February, 1871, (R. p. 240,) and that of 2d of March, 1871, (R. p. 240 and 241,) and in all other communications either from Rittenhouse or Peugh.

With these preliminary statements we proceed now to state the reply to the above named position of Justice Wylie in defending the action of the Court in dismissing Peugh's cross-bill. That position may be restated thus:

First. Because on the 16th of February, 1870, when Rittenhouse and Peugh were employed, there was, from Musser to Porter, no written power of attorney; therefore the employment of Rittenhouse and Musser, so made, was invalid.

Second. That because, as was alleged, Porter quarreled with Musser and repudiated him, thereby Porter's act in repudiating Musser worked, as a matter of law, the destruction of all rights of Peugh to compensation for services up to and after the time of Porter's quarrel with Musser.

That neither of these propositions is sound, either as to the facts involved, or the legal conclusions, we now proceed to show by what seems to us a degree of conclusiveness that is irresistable. Without arguing them in detail we now set down the propositions of fact, which are established by the record, bearing upon these views and conclusions attributed by the stenographic report to Justice Wylie, (R. 350.) especially p. 359, where the Court asks:

"Now what has become of these gentlemen who hang upon the string that supports Porter?"

I. That on the 16th of February, 1870, Porter employed as attorney for Richard H. Musser, Rittenhouse and Peugh is totally incapable of question or denial, because that employment is in writing, (R. p. 74.) and this fact is not denied.

II. That this contract of the 16th of February, 1870, was not as Musser attempts to swear it to be (R. 221) a mere selling out of a share of the fees, or a mere sale of an interest, but was, as its own words express it, an employment of Rittenhouse and Peugh to "aid

in the prosecution of the said claims before a commission appointed by and between the two republics."

III. This contract also was, in addition to said employment, to aid in said prosecution, an actual assignment, *in presenti*, of one-half of the amount of fees secured by the claimants to the parties who should prosecute the claims. If valid at all and binding, as against Musser and the rest, it was an actual present transfer, and from the date of its execution operated to create a property interest in Peugh and Rittenhouse equal to the interest it purports to assign.

Our next proposition of fact is that, at the date when this contract of the 16th of February, 1870, was made by Porter professing to act as the agent of Richard H. Musser, he, Porter, in fact, held, as between him and Musser, authority to make such contract as in his judgment was for the interest of the claimants.

In support of this proposition we submit the following considerations:

First. It will be seen that, even by Musser's own testimony, it is expressly and distinctly admitted that as matters were agreed upon between Muser and Porter, at this 16th of February, 1870, the agreement was that Porter and Musser were to be entitled to one-half of the fees that should be earned. At the bottom of page 212 and top of page 213 this is distinctly admitted where Musser swears that it was Porter who called his attention to the claims and to the existence of the treaty itself; one party, (Musser) to contribute his services, and Porter to bear the expenses, and that the fees should be shared equally. The same thing is repeated (R. 220). This fact then, to wit, that Porter originally, as between him and Musser, was the

discoverer of these claims brought, to Musser the knowledge of them, and of even the existance of the treaty, and made with Musser an arrangement by which they were equally interested in the claims, so far as fees were concerned, and in this regard stood with equal power and authority as between themselves regarding the management of the case, is an undisputed fact.

Second. On page 221, Musser, in answer to question "who attended to the presecution of the case at Washington?" replies that he, Musser, unfortunately trusted too much to Mr. Porter in that regard. The same thing is in effect thoroughly admitted in other parts of the testimony of this witness, to wit, that as between the two men their contract and understanding was that Porter might transact the business requisite, in his judgement, to the due prosecution of the case and the raising of money requisite for that purpose. The legal effect of this admission is obvious and important, and is that an employment made by Porter, in furtherance and execution of this understanding between Musser and Porter, is an employment duly and sufficiently authorized by Musser when honestly entered into by the employes, Rittenhouse & Peugh. In other words, it binds Musser as between him and Rittenhouse and Peugh if entered into by Rittenhouse and Peugh *bona fide*. There is nothing either in the Statute of Frauds or in the terms of the powers of attorney held by the claimant Musser from Couro (R. 309) or Standish (R. 309-10) or the other claimant, which requires that the authority to make employment of agents, by Musser, in execution of his powers held from claimants dated in December, 1869, should be in writing.

It is therefore, as a matter of law, totally immaterial, as between Musser and Peugh, that on the day of their contract, to-wit: the 16th of February, 1870, Musser had not, in writing, substituted Porter to make this contract with Rittenhouse and Peugh. The authority of Porter to act, in making the employment, as between Porter and Musser was complete. Musser had no more power, as between those two men and as touching the mere matter of the employment of assistant counsel, and the division of fees, to make the employment, than had Porter. They made each other equal by their parol agreement in this regard, except that Musser confesses the greater authority to attend to matters at Washington to have been entrusted to Porter. (R. 221.)

IV. But we now come to a proposition which, if sustained as a proposition of fact, by the record, renders the last preceding proposition immaterial. That proposition of fact is that:

Musser, after he fully knew of the employment of the 16th of February, 1870, of Rittenhouse and Peugh, and after he had received a full copy thereof, and after he had also come to the knowledge of the principal facts, of which he complains as to the wrong doings of Porter, he, Musser, by his acts, and also by his express words, fully, absolutely and unequivocally ratified and confirmed the said employment of Rittenhouse and Peugh of the 16th of February, 1870. This ratification is fixed in the case by two classes of evidence. In support of this proposition we refer to the following acts of Musser so ratifying the contract inferentially and circumstantially:

First. On page 218, folio 217, Musser admits that he became by correspondence between himself and Ritten-

house and Peugh, acquainted with these men in the spring or summer of 1870. This brings his correspondence with these men to a period immediately following their employment in February, 1870. On page 222, Musser swears that on the 15th of February, 1871, Rittenhouse wrote him, Musser, enclosing this paper dated the 16th of February, 1870, which is filed and made Exhibit R. H. M., as part of his testimony. This is the very contract of employment by Porter of Rittenhouse and Peugh. So that on or about the 18th of February, 1871, Musser was put in full and complete knowledge of the exact terms of the contract making Peugh's employment. In other parts of his testimony this witness admits, as we shall see hereafter this full and complete knowledge of this employment of Rittenhouse and Peugh so communicated to him by copy of the contract of employment in the letter of the 15th of February, 1871.

Second. We now come to the inquiry what circumstantial evidence of ratification, of this contract by Musser, exists? These circumstantial facts showing ratification are so numerous and complete that it is needless to point to more than a few of them. He admits on page 218, as already stated, his correspondence with Rittenhouse and Peugh in the spring or summer of 1870.

Third. He makes the same admission on page 221, folio 220.

Fourth. On page 223 he swears that the original manuscript of the memorials of claimants for filing with the mixed Commission were sent to the State Department through Rittenhouse.

Fifth. On the same page he admits that he sent

the affidavits, or testimony in support of the claims, to Rittenhouse. This was all done after he had full knowledge of the contract of 16th of February, 1870, with Peugh and Rittenhouse.

Sixth. On the 22d of February, 1871, Musser writes to Rittenhouse a letter, the last part of which relates to this business, and requests Rittenhouse to procure from Porter the powers of attorney held by Musser from claimants for the purpose of filing them.

Seventh. On the 21st of May, 1871, (R. p. 224) he writes a full letter to Rittenhouse, in which he encloses to him the memorial and proofs in the cases of Parson, Standish and Conro, against Mexico. The letter goes into many particulars regarding the progress of taking testimony in the case, and concludes by saying that "I will be obliged for any suggestions upon which I could act to make the proofs more complete without being purely accumulative." On the 9th of March, 1871, (R. 231-2) he again asks Rittenhouse to inform him whether he had procured from Porter the papers, contracts and powers of attorney in the cases of the three claimants, and in that letter he asks for the return of a letter which had been enclosed to Rittenhouse, in one from Musser to Rittenhause, dated the 27th of February, which related to these pending claims.

Eighth. On page 226, 227, he introduces into his evidence the affidavit of his law partner, Ellerbe, which shows that, during the prosecution of these claims and the time of their presentation at Washington, Porter was recognized in Musser's law office, and by his partner, as having an equal right with Musser to the possession of the papers; that during

all this period Porter frequently gave instructions and directions concerning the claims, and that such law partner understood that Porter was equally interested in them, and was to furnish the money necessary to prepare the claims, and was to take the proof and see to the presentation of the claims at Washington city, and was to receive one-half interest; and also that Porter, in the presence of Ellerbe, had said to Musser, that Porter would attend to the business in Washington, and did not want Musser to interfere with it, and that Musser was to attend to what came up in St. Louis. As bearing upon the matter of the ratification of the Rittenhouse and Peugh's employment, this proof from Musser himself is exceedingly strong and conclusive, showing that in the law office, at St. Louis, of Musser, it was thoroughly understood that Porter, and those by him then emplo yed, and known by Musser to be employed, were in that law office constantly recognized and regarded as carrying on the business in Washington city.

Ninth. On page 239, Musser swears that he sent the evidence in the case to Rittenhouse and Peugh, for the purpose of having it presented to the joint Commission.

Tenth. Winder held his employment originally from Peugh and Rittenhouse. He afterwards held it from Porter, the same party who employed Peugh and Rittenhouse. He never held any employment from Musser. Therefore, any recognition of the standing of Winder in this case as Attorney, is a recognition of Porter's power to make employments, and, of course, Porter's power to make the employment of Peugh.

On pages 117 and 143, in Winder's testimony, it will be seen that Pike and Johnson, through whom Musser seeks to work the exclusion of Peugh and of Win-

der from the case, signed, by one of the partner, of that firm, without the knowledge of Winder, and without his consent, the first argument which Winder had filed in the case, thus connecting themselves directly with, and recognizing the standing of counsel employed by Porter, and by Porter's employes, Rittenhouse and Peugh.

Eleventh. Again, and much more than this. It will be seen on page 143 in Winder's testimony that R. W. Johnson, Esq., of the firm of Pike and Johnson, Expressly and positively recognized and asserted the standing of Winder in the case, and excuses his signing of the brief prepared by Winder without Winder's consent, upon the principle that he, Johnson, "considered our friendly relations justified his (Johnson's) taking that liberty." He declared that he considered his signing of the brief of Mr. Winder as an act of comity.

Twelfth. On the same page, 143, it is proved that while part of the affidavits filed before the Commission were in Mr. Winder's handwriting, most of them were in Peugh's.

Thirteenth. On page 144 it will be seen that Peugh continued to labor in the cases diligently and faithfully until in 1872, and that Musser continued to correspond with him until that time, and for a year after he had received a copy of the contract of employment by Porter of Rittenhouse and Peugh, dated February 16, 1870.

Fourteenth. On the same page it will be seen that Winder, who managed the case up to its end, and for a long time associated alone with Peugh in the management, and afterwards with Pike & Johnson, swears

that Peugh was recognized by Musser as attorney in the case, in the letters from Musser to Peugh and by writing letters of instruction in relation to the cases.

Fifteenth. On page 145 it will be seen that Winder swears that he continued to the end to co-operate with Peugh in the prosecution of the cases.

Sixteenth. On pages 126 and 128 will be found a brief filed in the case before the joint Commission, signed by Winder and Peugh as of counsel.

Seventeenth. On pages 118 to 126 will be found another brief signed by Winder and Peugh as counsel, and which was filed in the said cases with the joint Commission.

We might add to these facts showing overwhelmingly the conspicuous, continuous and exceedingly important action and services of both Peugh and his attorney Winder in the management of these cases at Washington City, such management going on with the knowledge and partly under the direction of Musser, and establishing completely his ratification of the contract on the 16th of February, 1870. But surely a multiplication of the circumstantial evidence, if there were no other kind showing the ratification, would be useless and improper in this Court. There is no counterruling evidence, and the ratification is thus, inferentially and circumstantially, thoroughly established—established not only after Musser had substituted Porter by his written endorsement of the fourth of July, 1870, as attorney in the case (R. 309, 310), but also after he had received the copy of the employment of Rittenhouse and Peugh, which was sent to him on the 15th of February, 1871 (R. 222.)

But this ratification of the contract with Peugh and, Rittenhouse by Porter on the 16th of February, 1870, does not depend alone upon circumstantial evidence or acts of merely implied ratification. Musser expressly and in most explicit terms, directly and affirmatively, ratifies the employment of Rittenhouse and Peugh by Porter, 16th of February, 1870, in his letter in reply to the one which inclosed to Musser the said contract of Porter with Rittenhouse and Peugh. This letter of reply to the one inclosing to Musser the contract with Rittenhouse and Peugh, is dated the 18th of February, 1871. (See R. pp. 242 and 243.)

After complaining, in that letter, about some of the actions of Porter, he concludes the letter in these words, referring to the contract of the 15th of February with Rittenhouse and Peugh. He says:

"*I have no hesitation in affirming the contract.*

"Your obedient servant,

"R. H. MUSSER."

In the beginning of the letter his words ~~are~~ addressed to Rittenhouse are

"DEAR SIR: I am in receipt of yours of February 15 with inclosures. The contract is entirely satisfactory in so far as you and Mr. Porter are concerned."

Then in another letter (R. p. 244), he writes:

"I do not care to disturb the arrangement made by you in your faith with him, Porter, so I will enter into a contract with you that will bind me as the attorney in fact of the claimants and bind them."

There is other evidence in the record of express ratification, but we need not multiply these citations.

They are simply and absolutely conclusive, and they establish the fact that Musser deliberately, and after he knew all about the terms of the contract, and knew the services that were being rendered thereunder by Peugh and Rittenhouse, knew of the advance to Porter for the purpose of the expenses of the cases of the three hundred dollers, named in the contract of the 16th of February, knew of the acts of Porter, of which he complains, expressly ratified the contract, and for years thereafter continued to correspond with them, and to recognize them as attorneys in the case.

This employment, therefore, by Musser, of Rittenhouse and Peugh, through this ratification of their employment by Porter is a fact in the case wholly unescapable, and its important legal result in the case is that no odds what quarrels occurred afterwards, or even before, between Porter and Musser, and no odds how Porter may have attempted, as alleged, to ignore Musser's claimed leadership in the case, yet this quarrel between Porter and Musser has no effect in destroying the employment by Musser of Rittenhouse and Peugh, and their attorney Winder, unless Rittenhouse and Peugh did some act after they were thus employed by Musser, which put an end to [illegible] employment by Musser.

VI. The next proposition of fact in the case is this, namely, that neither Peugh nor his attorney, Winder ever did any act which empowered Musser to cut off their employment in the cases, nor did Musser ever give notice of the termination of such employment or exclude Peugh and Winder from the case.

Under this head we need only direct the attention of the Court to two or three results of the evidence bearing upon this point. One of these is this, that

Winder's services began with the beginning of the case. He not only prepared, with the assistance of Peugh, about all of the arguments and briefs that were filed before the joint Commission in support of the claim, but he had the leading and controlling management of the cases before the Commission from the beginning to substantially the end.

It will be seen that the correspondence of the Commission with counsel, the notices served, etc., were sent to Winder. It will be also noticed that the briefs of Winder already referred to and which appear in the case are able and exhaustive. It will be also seen that Winder corrected the memorials that were filed before the Commission. It will be seen that Musser knew of Winder's employment (R., bottom of 35 and top of 36), and not only did he not object to it but on the top of page 243, in his letter of 18th of February, 1870, already referred to, he commends the services in high terms, and says of them, "I must express my entire satisfaction with the promptness and frankness with which you have answered my inquiries," etc.

It will be also noticed that the services of Winder were so satisfactory to the counsel Pike and Johnson, whom in 1872 Musser introduces into the case, that these new counsel claimed and asserted, on principles of comity, the right and the honor of signing the briefs that were prepared by Winder alone.

On pages 116 and 117 will be found a description in detail of the services rendered by Winder and also by Peugh. It will be there seen that the first papers prepared and brought on from Musser by Porter to Washington were submitted then to the examination of Winder; that he then wrote out the forms of the affidavits, three or more, eliminating objectionable

matter, and also pointing out errors in the memorial proposed to be filed. It will be there seen that these were returned to Musser; that they were afterwards returned by Musser to Peugh, duly executed and were filed with the Commission by Peugh, and it will also be seen that he prepared a brief in the case which Peugh filed with the Commission.

It will be there seen that, in 1872, Winder received from the Commission a notice that all pending cases would be heard on the 1st of April, 1872. Also that Winder then prepared his first argument, which Peugh caused to be printed. Also that his work was so heavy that he asked and obtained a new contract orally, in 1872, increasing his compensation, which was reduced to writing in 1874; also that this argument, was filed with the commission on the 30th of March, 1872; also that thereafter the Mexican attorney obtained further time to produce testimony; that a copy of the new testimony was transmitted by the joint Commission to Winder, and on receiving this he prepared a second argument reviewing the facts and law relied upon by the Mexican counsel, and accompanied this argument with two affidavits, and that his argument was transmitted to the umpire for consideration; also that he received from the Commission then a notice that the Conro and Standish cases had been sent, owing to a disagreement of the Commissioners, to the umpire; also he received notice from the Commission that he would be allowed to argue the cases before the umpire; also that he did argue them; also that afterwards Parson's case was transmitted owing to a disagreement of the Commissioners to the umpire; that he received from the Commission notice that he could file with the umpire argument in this case, which he also did, and which is among the records of

the Commission in the State Department, together with the other arguments and briefs.

Such is the character of the services rendered by this employe of Peugh and Rittenhouse and Porter. To say that they extended from the beginning to the end, were the leading and controlling, services in Washington, in the case, is not, to state the matter, so strong as the evidence presents it.

Then in regard to the services rendered by Peugh, Winder testifies on pages 136, 40 that he recognized Peugh alone as the person here authorized to conduct the cases in the absence of Dr. Porter (p. 136.) He swears that his conferences were with Peugh who devoted himself to all the necessary duties of an attorney.

On page 140 Winder testifies that he had "no knowledge of the amount of money Mr. Peugh may have spent in the matter; but as attorney in fact and agent he was industrious and persistent in his efforts to procure the testimony and to forward the proceedings before the Commission. I think he was especially diligent in getting the parties in Missouri to furnish the necessary pleadings in the case—I mean memorials—and also the testimony upon which the cases were adjudicated. My belief at the time was that it was in a great measure due to his efforts that the testimony was received in time to meet the requirements of the Commission in relation to the closing of the cases on the 1st of April, 1872."

Such was the character of the services of these men. To say of them and of their conduct generally that there was nothing in their acts which gave power, in law, to Musser to turn them out of the case, either by the employment of Pike and Johnson or by serv-

ing a notice upon them that their contract was at an end, is to say what is completely warranted by the testimony in the case.

Again, not only was there no default or failure in these men, Peugh and Winder, to perform their full duties under their employment, nor anything which would authorize Musser to put an end to the contract, but, as a matter of fact, he never did put an end to it, but, on the contrary, he and his newly employed attorneys, Pike and Johnson, continued to receive their services, claimed the privilege of signing the briefs that they had filed, and participated with them in the management of the cases as above described.

Having now gone over the points of facts in this case so far as we deem requisite, we deem it utterly useless to cite authorities upon the propositions of law which these facts bring into operation. They are principles of law wholly elementary and absolutely unquestioned. One would be that where an agent does an act which was not authorized by his principal, yet when adopted by the principal it becomes the act of that principal the same as if the authority had existed when the agent acted. Under this principal the employment of Peugh and Rittenhouse stands precisely as if it had been made on the 16th of February, 1870, by Musser himself instead of by Porter.

Another principal is that, where an agent employs a third party (in this case Rittenhouse and Peugh) which employes take their employment on the faith of full authority in the agent to make the employment and bind his principal, and go forward under their employment in execution of their duties, and where the principal (in this case Musser) becomes cognizant of the employment and ratifies it, and afterwards a quarrel arises between the agent (Porter)

and the principal (Musser) wherefrom the principal claims or asserts the right to repudiate with his agent Porter, in such case no consequences of this quarrel can be by the principal Musser, inflicted upon the *bona fide* employes, Rittenhouse and Peugh.

Still another familiar principal is that where a party claims the right to rescind a contract (in this case the contract ratified by Musser, and made with Rittenhouse and Peugh) that right of rescision must be promptly and expressly asserted and notified to the party against whom the recision is desired to be accomplished. Upon this point the doctrine of this Court is stated in Grimes *vs.* Sanders, 3, Otto. 62, and the authorities cited. Applying in the present cases, this principal of law to the facts in the case, it is perfectly obvious, it seems to us, that this contract, so ratified by Musser, has never been rescinded, or in any way put an end to, and that it has full and complete force to-day.

VI. There is but one other point in the case to which we care to refer in this brief. It is the effect of the release by Rittenhouse, dated the 2d of Sep't. 1872 (R. 239) to Porter of his, Rittenhouses's right, title and interest in and to the several claims referred to in the agreement between Porter and Pugh and Rittenhouse, of the 16th of February, 1870. It was, we believe, not seriously contended that this act of Rittenhouse done without the knowledge or consent of Peugh and in his absence, can in equity have any effect in the rights of Peugh.

Treating now this contract of the 16th February, 1870, as an obligation by Rittenhouse and Peugh to Porter, Porter, the obligee of the obligation, releases one of his obligors (Rittenhouse), and does this in the

absence of Peugh, the other obligor, and without his notice and without any consent ever having been given by Peugh. In such a case even at common law the discharge of Rittenhouse would as between Porter and Peugh work no impairment of the rights of Peugh under the contract. To assert that it would, seems to us quite absurd. It might discharge Peugh's obligation to go forward if he chose so to elect, but certainly it could work no discharge of Peugh's rights under his contract and he would be unaffected by this transaction strictly *res inter alios acta*.

In the case of Claggett vs. Salmon (5 Gill & Johnson, 315), the Court says:

"At law if two persons be bound jointly and severally and the obligee releases one of them, both are discharged. Yet equity will not give a release, an operation beyond the intention of the parties and the justice of the case."

"Courts of equity in all cases of alleged discharge, owing to a release of one of the parties, are governed, by no technical rule of the common law upon this subject, but are guided wholly by the intention of the parties and the justice of the particular case." State *vs.* Watson, 44 Mo., 305.

This doctrine is thoroughly established by the adjudications of this Court in the case of Oelrichs *vs.* Spain, 15 Wall., 211. It is expressed in the following words:

"A release not under seal is not a technical bar even in a suit at law. But even when sealed it cannot be set up in equity to defeat those who were not parties to it and who had separate interests."

If the Court should, from a view of the evidence reach the conclusion that the decree below must be

reversed so far as relates to the dismissal of Peugh's cross-bill—as seems plain to us the court must do—then we ask that the Court shall direct what decree shall be as to Peugh entered below. We ask this because there is no accounting as to Peugh's interest called for or possibly required in the case. All amounts involved are exact in amount, and fixed either by public records or written contract. The whole amount of the three recoveries is $143,812.32, (R. p. 3.) Of this Peugh's contract, (R. 39,) gave him and Rittenger one-fourth, or $35,953.08, and, of course, gave Peugh one-eighth, or $17.976.54.

This one-eighth of Peugh's ought to be subjected to the payment to Winder's estate of Winder's fees, which is $1,000, (R. 116,) or if the Court shall deem that, as against Peugh, that estate is entitled to Peugh's proportion of the four per cent. agreed on in the contract reduced to writing on —— of April, 1874, (R. 116, 137) then Peugh's share may be subjected to that amount. Winder's evidence as to this substituted contract as to his fees is at page 137, of record.

SHELLABARGER & WILSON,

Attorneys for Appellant.

112-137

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Supreme Court of the United States.

OCTOBER TERM, 1884.

No. 135.

SAMUEL A. PEUGH, Appellant,

vs.

RICHARD H. PORTER et al., Appellees.

BRIEF OF STEPHEN V. WHITE, APPELLEE.

Supreme Court of the U.S.

OCTOBER TERM, 1884.

No. 135.

SAMUEL A. PEUGH, *Appellant*,

vs.

RICHARD H. PORTER, *et als.*, *Appellees*.

BRIEF OF STEPHEN V. WHITE, APPELLEE.

This is an appeal from the Supreme Court of the District of Columbia, on a cross-bill by appellant, to a bill brought by Thos. P. McManus against Richard H. Porter, and the appellant and others, to enforce alledged equitable assignments for portions of certain awards against Mexico, amounting to $143,134.82, made by the joint commission between the United States and Mexico, of July 4th, 1868. The controversy, in all, was for one-half of the awards. The money was on deposit in the United States Treasury, payable upon the order of the Secretary of State, under act of Congress approved June 18th, 1878.

Counting the cross-bill of appellant, there were four separate bills pending for like relief, by as many different plaintiffs against the same awards.

The appellee, Stephen V. White, was made a defendant in all said bills, and he defended against all of them as the legal assignee of record in the Department of State of the entire moiety in controversy, asking no affirmative relief but depending entirely on the action of the Secretary in his behalf as such assignee.

By order of court, these causes were all consolidated and heard together in the General Term of the court in the first instance, and on such hearing, all the bills therein were dismissed and appellant, alone, of all the parties appeals.

The appellant's chain of title consists of two links. In the first link there is one fatal defect; in the second, there are two defects—either one fatal.

Now, as to the first link:

His rights depend upon contracts made by the claimants against Mexico, either with with Richard H. Musser, or Richard H. Porter, the terms of which, in each case, were identical.

A copy of a sample contract with Porter, (and all of them whether with Porter or Musser, were identical in terms.) may be found at bottom of page 339 of record. We quote: "The party of the second part is employed "and empowered to prosecure, under the joint commis- "sion * * * the claim against Mexico. "The said party of the second part is, to pay all expenses "and to receive half of the net proceeds of said claim, "after deducting the expenses of said prosecution."

This is a mere executory contract, depending for its validity, as against the principal, upon the faithful performance of certain duties by the attorney, namely,

faithfully "prosecuting the claim," and also "paying all expenses."

This contract does not even bear the semblance of an equitable assignment. Its consideration belongs to a court of law.

Following the leading American case of Rogers *vs.* Hosack, 18 Wendell 319, this court after a long series of cases, all in harmony with that one, decided in Trist *vs.* Child, 21, Wall, 447, this class of contingent fees, forever. The court says "The mere agreement to pay out "of such fund is not sufficient. There must be an appropriation of the fund *pro tanto* * * * in such a manner that the holder is authorized to pay the amount directly to the creditor without the further intervention of the debtor * * *

"For a breach of the (mere personal) agreement the remedy was in law not in equity and the defendant had a constitutional right to a trial by jury."

Suppose that after the signing of this executory agreement, Musser and Porter had entirely neglected the business, and furnished no money for expenses and the claimants had hired other attorneys and secured their awards. Suppose on the rendition of the awards, Porter and Musser wake up and bring an action in equity for enforcement of the contract, does not the constitutional right exist in the principals to say, you neglected your agency and on this we demand a jury trial? Was there any lien on the fund in such a case? But, "if there was no lien, there was no jurisdiction, in equity."

Trist *v.* Child, *Supra.*

The second link, with its two fatal defects, is to be found on page 86 of the record.

This is the employment jointly of the appellant and one Rittenhouse by Porter to furnish money for "prose-

cuting the claims," followed by a cancellation of the contract by Porter and appellent's joint contractor, Rittenhouse.

Had not Porter a right to a jury trial here?

An inspection of this record page 104 will show that Peugh promised his counsel, Winder, a fee of $1,000 and did not pay it, and (page 66) that Porter was thereby compelled to employ him over and to become bound for the payment of more than $5,700.

Now the proposition here made by appellant is—that in a case, where defendant Porter was entitled to a trial by jury, that a Court of Conscience may usurp jurisdiction, and upon a record which affirmatively proved that by the laches of appellant,—Porter had lost $4,700, this court should render a decree for appellant for $17,976.53.

Such a claim could only be applied, upon the theory that Peugh was entitled on a *quantum meruit*, to a judgment for $17,976.53 for the discovery of a lawyer competent to write a brief in the case.

The case of Clagett *vs* Salmon, 5 Gill and Johnson, cited page 30 of appellant's brief, has no relevancy to this case. This is not a "joint and several" bond. It is a joint executory contract under seal.

It is for raising money by two promissors jointly. One of them threw up his contract and the other never performed it, and I plant myself firmly upon the proposition that a sane mind rejects pure error; and this claim is as erroneous as any ever presented to any court at "law or in equity."

For the reasons herein set forth, appellee claims that litigation should have been stopped in its inception and appellee's demurrer to the original amended and supplemental bills should have been sustained. See page

28 of the record. Thousands of dollars would have thus been saved in actual expenditure, and months of time could have been devoted to some paying labor, and on the final hearing the bill must be dismissed for want of equity.

As to any argument upon the merits of the controversy between the various claimants, further than is outlined herein I have never framed one and never shall attempt to. Life is too short and the labor too great.

Seen in perspective, without analytical examination, the bills appear multifarious in substance and multitudinous in parties litigant, and of counsel.

The record shows twenty-five defendants named in the several bills and it also gives the names of twenty solicitors and counsel taking an active part in the contest.

But it is not so much the number, as the greatness of the names engaged, that should make this contention rank among the list of *causes celebres*.

The premier of the Government is a defendant.

A distinguished ex-Senator of the United States, at once a poet, a statesman and a warrior,—figures in different epochs of the contest, respectively, as a defendant, counsel and as witness. I allude, of course, to Gen. Albert Pike, of Arkansas.

Mr. Claflin, the most distinguished living merchant of America, is made a party, and as the record fails to connect him in any way with the controversy, it would seem that he was made one of the *dramatis personæ* to heighten the magnificence of the litigation.

Among these great names,

"*Apparent rari nantes in gurgite vasto*,"

are those of claim agents from Kentucky, from Mis-

souri, from Georgia, and "last, not least," from Washington, D. C.

The original bill which precipitated this avalanche of litigation was brought by an officer of the customs, who had once done duty for his Government, seated upon a mustang, on the Mexican frontier.

To add color to this great picture, all the original processes in this case (including that whereby a single judge in chambers enjoined the Secretary of State of the United States from further action in the premises) were all served by that eminent and eloquent American citizen of African descent—the Hon. Fred Douglass.

Nor is the array of counsel less imposing, either in number or eminence.

The original bill of McManus and the answer and cross-bill thereto, were all signed by an eminet jurist, once a governor, and for many years a judge on the highest appellate court of the Foster-Mother of Presidents—the State of Ohio.

Beside him, the appellant Peugh, has had the rare good fortune to number among his counsel in the progress of this cause three ex-members of Congress; two of them also from the State of Ohio.

In addition to all these, this record discloses the names of 16 counselors of the District of Columbia, all learned in the law, and all doing honorable duty, in behalf of their clients, at the trial in the court below. And the history of the case would be incomplete if we failed to note that, though the injunction herein, remained in force and was scrupulously observed by Mr. Evarts, Secretary of State, through a period of over two years it was finally reserved for another secretary, since then even more widely known to fame, (I refer to the Hon. James

G. Blaine) to exercise the duty imposed upon that officer by Act of Congress, and to pay me the moiety of these awards as the legal assignee thereof.

As would be supposed in the contest where such giants were engaged, there were many startling features tending to please the fancy and delight the imaginations.

Captain Marryatt in "Midshipman Easy" describes a triangular duel where the three belligerents were stationed ten paces apart at the angles of an equilateral triangle, and at the given word each man fired at the opponent on the right.

The trial in the court below was much more complex. This was a polygonal battle with two advocates stationed at each angle, firing right and left, at the same time, varied by an occasional volley by platoons against myself as a common enemy.

McManus, a Texan vidette, on the banks of the placid Rio Grande, successfully grappled with the erudite Evarts of New York—then Secretary of State, and by order of a judge at *Nisi Prius* enjoined him from further discharge of his duties in the premises. See record section 3, page 4 and page 6—"by the court. Humphries, Justice."

It is a pleasing illustration at once of the simplicity and power of Republican institutions when we see the humblest judicial officer in this District sitting in chambers, grasp the highest executive officer, under the President, as it were, with a hand of steel, and thus hold him through almost three years of litigation, upon an order granted *ex parte*, and *sine lege, aut jure*.

As we contemplate the Honorable Secretary waiting through these years for permission from the judiciary for the executive wheels to move, let no satirist in this country ever hint at an American circumlocution office.

Out of the multitude once engaged in this strife (I should feel honored to believe, it was upon the doctrine of the survival of the fittest), there remain in the contest only the appellant and myself.

Cabinet-officers, Statesmen, Warriors, (and there were many of them, all of whom had faced to the North when in battle) poets, merchants, claim agents, counsellors-at-law (to the number of seventeen) and the customs-officer of the Rio Grande, have all dropped out of this contest, and there remain only appellant, his two counsel, and myself.

Each of us is striving to go down in the records of the court, as the Leonidas of this Thermopylæ,—beyond which there is no other pass to defend.

During the pageantry of this litigation it has been my simple duty to stand by; not offering testimony, and not commenting on any; modestly voicing only the one petition—which in closing I here repeat, that I may be hence dismissed with my reasonable costs.

S. V. WHITE,
In Person.

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112-737

Supreme Court of the United States.

SUPPLEMENTAL BRIEF.

SAMUEL A. PEUGH,
vs.
RICHARD H. PORTER *et als.* } No. 135.

The brief of appellee having been filed only the day preceeding that on which the case was heard, and on the day the hearing was expected, we beg to submit under the leave granted the following in relation to points made in the brief; and in relation to a question by Mr. Justice Bradley on the hearing on a point not before suggested. We confine ourselves to these.

I.

1st. Is this a case cognizable in equity, or was the remedy exclusively at law? Mr. White in his brief claims on the authority of Trist vs. Childs that there was no lien on the fund and therefore there is no jurisdiction in equity.

(*a.*) We claim that Porter and Musser were jointly interested in certain prosecutions of the results of which they were to share equally.

(*b.*) That Porter assigned one-half of his interest to Peugh and Rittenhouse.

(*c.*) That (as we will hereafter point out,) the one-half of the recoveries was by the action of the claimants left in the custody of the Secretary for the purpose of being distributed to such persons as might be thereto or therein entitled.

(*d.*) That by Porters assignment to Peugh and Rittenhouse they became entitled to the one-half of Porters interest, held by him at the time such assignment was made.

(*e.*) That Rittenhouse by a release made by him without the knowledge of Peugh, could not defeat any interest that Peugh had; and more especially so, since Peugh continued to perform the contract on his part without objection, and without any notice to him that his contract was not to be the measure of his compensation for the services he was rendering.

(*f.*) Peugh therefore had a right to proceed in equity to procure his compensation out of this fund, which has been setapart for the payment of attorneys fees.

Oelrich *vs.* Spain, 15 Wall. 211.
Wylie *vs.* Cox, 15 Howard 415.
Wright *vs.* Tibbitts, 91 U. S. 252.
Stanton *vs.* Embry, 93 U. S. 248.

What the record discloses as to the powers, assignments, etc., is as follows:

1st. The claimants, Standish, Conrow and Parsons, agreed with Musser (for the benefit of Porter and Musser) to pay one-half of the recoveries respectively as fees. Rec. pp.

2d. They gave Musser powers of attorney to prosecute the claims.

3d. As to two of these Musser gave substitution to Porter. Rec. pp.

4th. *March* 19, 1872. Standish gave power of att'y to Pike & Johnson to prosecute, and an assignment of one-fourth of the recovery in that case. Rec. p. 329.

5th. *August* 28, 1872. The Connors gave power of att'y to Pike & Johnson to prosecute that claim. Rec. p.p. 333.

6th. *March* 28, 1872. David Conrow, gave power of att'y to Pike & Johnson to prosecute. Rec. p. 334.

7th. *March* 12, 1874. Parsons gave power of att'y to Porter to prosecute, p. 338, and a contract to pay him one-half of the net proceeds, p. 339, and revoked all former powers.

8th. *July* 8, 1874. Parsons gave a power of att'y to Pike & Johnson to prosecute. Rec. p. 332.

9th. *May* 8, 1874. Standish gave Porter power of att'y to prosecute annulled former powers, and made an agreement to pay Porter one-half the net proceeds Rec. p.p. 342, 343.

10th. *April* 30, 1875. Standish assigned to Pike & Johnson twenty-five per cent of the award that had then been made in that case.

11th. *Sept*, 20, 1876. Porter assigned to White the interest derived under his power etc., from Parsons, of date March 12, 1874. Rec. 337.

12th. *June* 14, 1877. Porter assigned to White the interest in the Standish claim under the power of agreement dated May 8th, 1874.

13th. *Feb.* 12, 1879. Pike & Johnson, and Musser assigned to White, all the interests they had in which assignments they recite in substance that they have assignments from Standish, Parsons & Conrow. Rec, p. 336.

It appears therefore from the above recited facts that Porter never held from the original claimants any power to sell the claims to White or anybody else, his power being only a power to prosecute and an agreement for an interest in the recovery equal to one-half of the interest of the two claimants from whom he held powers, to wit, the interest of Parsons and Standish. So that the result of this fact is that Porter never held any power to make a sale of these claims, to White, and could as against the original claimants make no title to the claim for the two shares that he represented by powers. Unless the position taken by Mr. White, that an agreement for a share of a recovery is not an assignment, as claimed from the case of Trist *vs.* Child, supra is unsound.

The result of this therefore is that Mr. White has never purchased an interest in the claim itself, be-

cause the party from whom he attempted to purchase, to wit, Porter, had no power to make such sale.

It also results from this that Porter never held the legal title to the recoveries of the two claimants from whom he held powers. He could therefore not sell the title to White, whether White was a bona fide purchaser without notice or not.

We are therefore remitted to the question where the legal title of this fact which is in contest was at the beginning of this litigation as between the original claimants and the various parties to this suit.

Now it appears from the assignment made to Johnson of the firm of Pike & Johnson that the legal title was assigned to Pike & Johnson, (R. 330) on the 30th of April, 1875, of twenty-five per cent interest in the award in favor of Standish.

It also appears by the record in the recitals contained in the assignment by Pike & Johnson and Musser to Stephen V. White that Pike, Johnson and Musser held assignments from all three of the original claimants of the claimants' interest in the thing assigned to White, by his assignment of said date such thing assigned being of the interest that had been assigned to them by the original claimants.

From these facts it results that these parties defendant to Peugh's cross-bill are estopped from denying that the legal title had passed from the original claimants to Musser and Pike & Johnson, and hence that the original claimants had no interest in the fund in controversy; and these facts bring us to this result, namely that it is utterly immaterial whether the agreements originally held by either Porter or by Musser with the original claimants constitute in law

and equity an assignment or not. The interest of the original claimants is shown as between all parties to this controversy to have been actually transferred to the parties other than the original claimants who are litigants in this case.

We have therefore the fund divested of all title therein by such original claimants, and the fund stands in the name, possession and ownership, accordingly as equity may determine, of the other parties to this controversy than the original claimants.

We are thus brought to the question what is the true state of the equities of these parties litigants, other than the original claimants, in regard to the fund in controversy?

Now, first, in regard to the equities as between White on the one part, and Peugh on the other.

White's contention is that he could buy the interest of the original claimants as he did from Porter or from Pike & Johnson, because he says under the doctrine of Trist and Childs an agreement for a share of a fund is not an equitable assignment thereof. This position does not aid his case at all because, first, he could buy no title from Porter because Porter held no title to sell the title to him, Porter's power being limited to prosecuting the claim. He therefore got no title as against Peugh or anybody else on the theory that the original claimants owing to the absence of a lien as against them could sell a title to any bona fide purchaser.

Again, when by assignment from the original claimants this legal title came to Musser as one party, and to Pike & Johnson as the other party, then that legal title came to them subject to all the equities

that the evidence in the case shows to have existed as between them and Peugh. In their hands, to wit, the hands of Musser and of Pike & Johnson, this fund became instantly charged with all the equities which Peugh had as against this fund. Now the equity which Peugh had as against the fund in the hands of Pike and Johnson and Musser is that which was created by the contract by Porter with Rittenhouse and Peugh of date February 16, 1870. Rec. p. 39. That contract is an actual assignment and under the doctrine of Trist and Child, as claimed by White, it creates a perfect equity in the fund in the hands of the said Pike & Johnson and Musser. It creates this equity whether Pike & Johnson and Musser had notice of the contract with Peugh and Rittenhouse or not, for the obvious reason that it was an attempt on the part of the agents of the original claimants to create such lien and was a good lien against everybody except the original claimants. And hence when Pike & Johnson and Musser obtained the title they obtained it subject to this equity.

But in this case it is utterly immaterial whether this last proposition is sustained by the court or not, because the record shows abundantly as our original brief establishes that Pike & Johnson and Musser had full notice of the character of the employment and of the assignment by Porter to Rittenhouse and Peugh of February 16, 1870.

Pike & Johnson worked in the case, so far as they worked at all along with Peugh and signed the same briefs that Peugh signed, and Musser as shown by our original brief had full and actual notice of the character of this assignment to Rittenhouse and Peugh and expressly ratified it.

It would be enough for us to show that Pike & Johnson and Musser came to the knowledge of facts sufficient to put them on inquiry in regard to the character of Peugh's claim, but they were in fact in full notice of the character of the Peugh claim. Hence in the hands of these men who attempted to sell to White, to wit, Musser and Pike & Johnson, this fund was subject to the lien of Peugh, subject to his complete assignment, an assignment good in law and in equity.

This therefore brings us to the next suggestion, which is that it is utterly immaterial as to whether White had any notice when he bought from either Porter or from Pike & Johnson and from Musser of this lien, assignment and equity of Peugh. It was a mere chose in action, and bona fide purchasers took it subject to all equities and liens existing against the fund; and White is not therefore aided by any law derivable from the case of Trist and Child or any other law. He stands, as the record proves, simply in the position of a man attempting to buy a fund upon which there is an equitable lien, and of which lien he is bound to take notice. Hence this is a case for equitable jurisdiction.

II.

On the hearing, Mr. Justice Bradley asked the question as it was understood at the time, whether on a cross-bill, in the suit of McManus, Peugh could obtain the relief he was seeking, or, whether an original suit was necessary on his part.

In reply to this we refer:

1st. To the 2nd paragraph of McManus' bill (p. 1.)

in which he avers an assignment by Porter to Peugh and Rittenhouse of one-eighth.

2nd. To this bill, Peugh having been made a defendant answered, (p. 17.) that Porter did assign &c., in consideration of services and advancements.

3rd. He also filed a cross-bill, (p. 18.) in which he sets up this assignment, the services rendered, and advancements made; the alleged assignment to Mr. White, &c.

4th. He also filed an amended cross-bill, p. 22, et supra, making White and all the other parties in the original bill (except himself) defendants thereto setting forth the facts of the case, as to each of the parties, identifying the matter with those in the original bill, and praying (¶25), that a lien be decreed in this favor, upon said fund; that the assignment to White be decreed to be subject to his (Peugh's) rights for process, and for general relief.

5th. Process was issued against White on this cross-bill. p. 20. and he acknowledged service p. 21.

The question then is, Peugh having been made a defendant to the bill filed by McManus, in which the assignment to him, (Peugh) was averred, and Peugh having answered, setting up his interest and then having filed a cross-bill and amended cross-bill claiming an interest in the fund, to which White was made a party; process issued against him (White) and served. Whether these are sufficient to authorize the Court to grant affirmative relief, or should Peugh have filed an original bill. We claim that such a bill was not necessary.

Story's Eq. Jur. Sec. 398–400.
Cross *vs.* DeValle, 1 Wall. p. 14.
Ayers *vs.* Chicago, 101 U. S. p. 187,
2 Daniels Chy. 1549.

Indeed it seems to us that a cross-bill (with an answer) was the only proper mode of making the rights of the parties. McManus by his bill was seeking to appropriate the fund as against Peugh and others, and it was therefore necessary that in *that* suit, every person made a defendant should assert in some form his claim to an interest in that fund. The cross-bill was for the identical subject matter contained in the original bill.

If each defendant to the bill of McManus must bring an original bill in order to obtain his interest in the fund there would be a multiplicity of suits, which for the purpose of arriving at the rights of all the parties would have to be consolidated. A cross-bill therefore would seem to be the direct and appropriate means of determining the rights of Peugh.

SHELLABARGER & WILSON,
Attorneys.

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SUPREME COURT OF THE UNITED STATES.

Supplemental Brief of Appellee, Stephen V. White.

OCTOBER TERM, 1884.

No. 135.

SAMUEL A. PEUGH

vs.

RICHARD H. PORTER *et als.*

In answer to the Supplemental Brief of appellant, I say :

1st. I claim nothing through the defendant Richard H. Porter. He never had any right to the awards to give me or any one else. I threw away $12,000 in money on a supposed right on the part of Porter in two of the awards, and having found out that his claim was bogus, I abandoned it.

2d. I am asking nothing at the hands of this Court. I am disputing the jurisdiction of a Court of Equity. I do not disclose my title, and I strenuously object to the appellant making for me a title of straw, that he may break it.

3d. The appellant must recover, if at all, upon the equity of his own case, not on the weakness of my right. He must recover as against the original claimants, Parsons, Standish and Conrow, who were necessary parties to the controversy ; and unless he shows equity against them—if the Court had possessed my written consent to a decree in his favor ; yet, unless those claimants had also appeared and consented, the Court could never have properly rendered a decree in appellant's favor. Service has been had

by publication on them ; no one has appeared for them, and they do not consent to anything.

4th. Appellant's right is derived through Musser or Porter, and he has no right as against Parsons, Standish and Conrow superior to the rights which Musser and Porter had under their executory contract. And as stated in my original brief, there must be an " appropriation of the fund *pro* " *tanto* in such a manner that the holder is authorized to pay " the amount directly to the creditor, without the further " intervention of the debtor," which can never exist on a contract which embraces mutual undertakings and covenants which are to be performed *in futuro*.

Trist *vs.* Child, 21 Wall., 447.
Wright *vs.* Ellison, 1 Wall., 16.

5th. But if Musser or Porter did have the right to enforce their claim against the original claimants, the appellant did not have such right against Porter.

Porter contracted *in solido* with appellant and Rittenhouse to furnish money and legal services in the cases. It was not stated how Rittenhouse and appellant were valued, whether equally or not.

Rittenhouse throws up his share of the contract. Now, I say it is not the province of a Court of Equity to enforce one-half the contract as in favor of Peugh—in the nature of an equitable assignment.

He must recover on a *quantum meruit*, and let Porter have a jury trial—which is his constitutional right.

6th. I make no question as to the regularity of this action as a cross-bill. Let the Court treat it as a cross-bill—a bill of interpleader—or an original bill, it makes no difference.

I dispute its equity in every form.

S. V. WHITE,
In person.